DOCUMENT RESUME

ED 260 985 SO 016 772

AUTHOR Suter, Coral; Croddy, Marshall
TITLE To Promote the General Welfare: The Purpose of Law. Law in Social Studies Series.
INSTITUTION Constitutional Rights Foundation, Los Angeles, Calif.
PUB DATE 85
NOTE 51p.; For related instructor's guide, see SO 016 771. Project supported in part by the Rowland Unified School District. Materials completed for use by the California State Department of Education and the United States Office of Juvenile Justice and Delinquency Prevention.
AVAILABLE FROM Constitutional Rights Foundation, 601 S. Kingsley Drive, Los Angeles, CA 90005 ($15.00; 30 student editions and free instructor's manual, $135.00).
PUB TYPE Guides - Classroom Use - Materials (For Learner) (051)

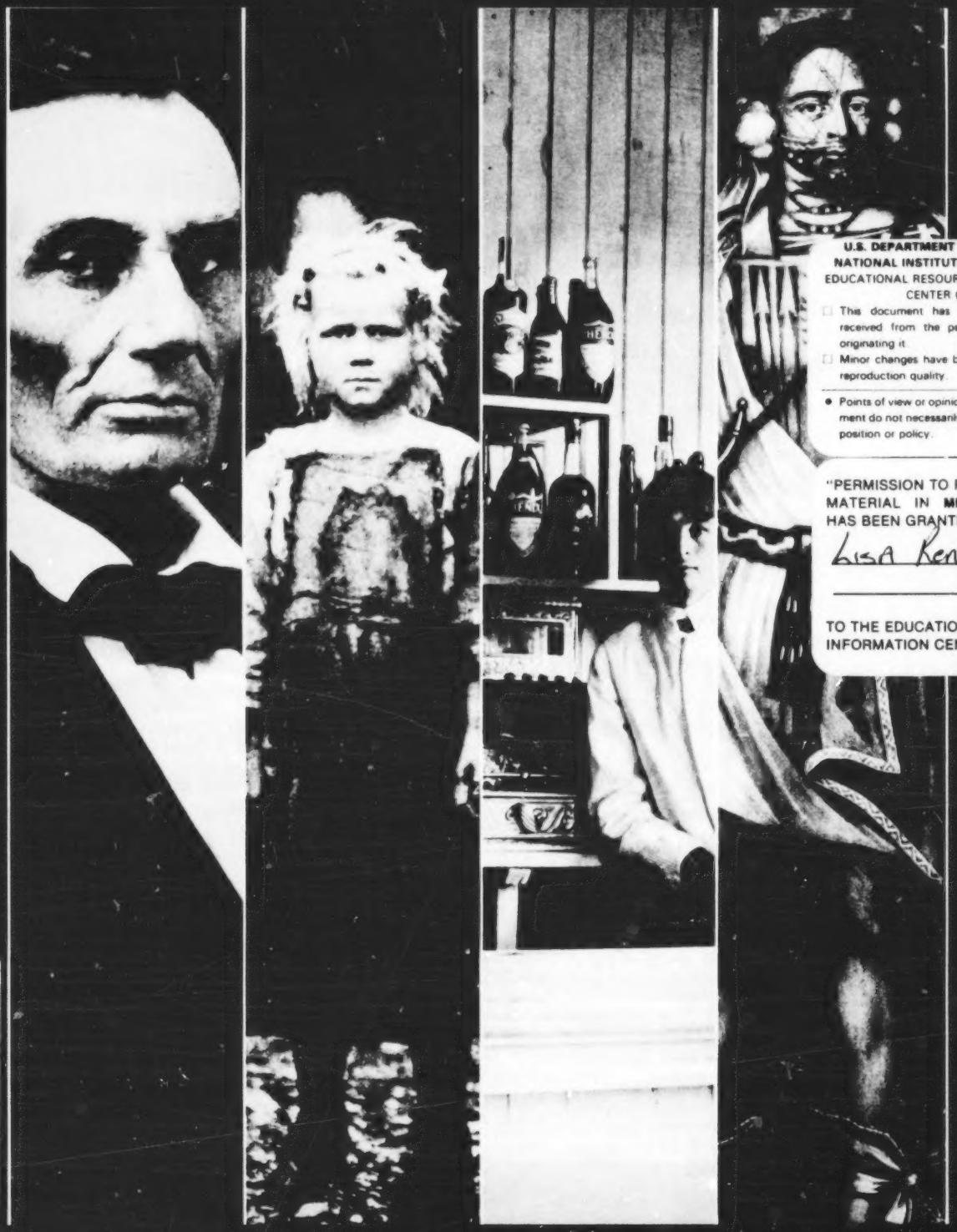
EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS American Indians; Child Labor; Citizenship Education; Civil Liberties; Constitutional Law; Criminal Law; Decision Making; Educational Objectives; Fused Curriculum; *History Instruction; Integrated Curriculum; *Interdisciplinary Approach; Laws; Learning Activities; *Legal Education; Patriotism; Questioning Techniques; Secondary Education; *Social Studies; Teaching Guides; Teaching Methods; *United States History; Units of Study
IDENTIFIERS Iroquois (Tribe); Lafitte (Jean); *Law Related Education; Milligan (Lambdin); Prohibition; Salem Witch Trials

ABSTRACT

This student booklet is part of a curriculum designed for infusion into secondary U.S. history courses to help students explore the purposes of American law. The booklet contains student readings and discussion questions and suggests learning activities. There are five units. Unit 1, "Law in a New World," examines processes used to make legal decisions during the American colonial period. Students compare the consensual process used by the Iroquois Indians with those processes used during the Salem witch trials. Set in New Orleans during the War of 1812, Unit 2, "Patriots and Pirates," involves students in evaluating whether Jean Lafitte was a patriot or a pirate. They apply criminal law standards to actual cases in which Lafitte was involved. In Unit 3, "During the Late Wicked Rebellion," students study about Lambdin Milligan's resistance to the War between the States and learn that the protection of individual liberty is a primary purpose of the U.S. Constitution. In Unit 4 students examine legislation aimed at ending "Child Labor in America." Unit 5, "The Twenties in Turmoil," examines the nature, purpose, and consequences of Prohibition. (RM)

TO PROMOTE THE GENERAL WELFARE: THE PURPOSE OF LAW

ED260985



U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Lisa Rentschler

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

SO 016 772

Law and U.S. History

TO PROMOTE THE GENERAL WELFARE: THE PURPOSE OF LAW

A Salem witch trial. *The Bettmann Archive, Inc.*

Developed and written by
Coral Suter and Marshall Croddy

Contents **Page**

Unit 1 Law in a New World: Ways to Resolve Conflict **3**

Unit 2 Patriots and Pirates: Law and Facts **13**

Unit 3 During the Late Wicked Rebellion: Protecting the Individual **23**

Unit 4 Child Labor in America: Protecting Society **29**

Unit 5 The Twenties in Turmoil: The Scope and Limits of Law **39**

Vocabulary **48**

LAW IN SOCIAL STUDIES SERIES

Constitutional Rights Foundation
601 South Kingsley Drive
Los Angeles, California 90005
(213) 487-5590

Principal Staff and Reviewers

Vivian Monroe, Executive Director
Todd Clark, Education Director
Kathleen Stewart, Associate Education Director
Carolyn Pereira, Executive Director, Chicago Office

Daphne Dennis
Michele Kantor
Cathryn Berger Kaye
Charles Lavaroni
Carolyn Newman

CRF Publications Committee

Jerome C. Byrne, Chairman
Bayard F. Berman
Julia Rider
Lloyd M. Smith

Field Test Educators

Sally Mentor, Director, Student Conflict:
Strategies and Analysis Project
Rowland Unified School District

Tom McGuire, Project Evaluator

Dick Ingalls, Barbara Schwisow, Alan Aylor, Katy Bruich, Paul Burton, Luciano DeSylva, Yolanda Finley, Warren Glaspey, Al Goose, Steven Hansen, John Hale, Stephany Lovell Johnson, Bob Kenady, Chris King, Tom Lindley, Adam McLeod, David Orr, Chris Piercy, John Romano, Charles Roughton, Greg Stevenson, Cheryl Zawicki

Project Assistant:	Maureen A. Sterling
Production Coordinator:	Lisa Rentschler
Design:	Richard Stein and Friends
Cover Photography:	Library of Congress National Portrait Gallery of the Smithsonian Institution
Printing:	Navigator Press

Special thanks for staff assistance from Caroline Johnson, Cherie Potthoff and Craig Vincent-Jones

Grateful acknowledgement is given to the following organizations for use of material from their collections:

The Bettmann Archive, New York
Indiana Historical Society, Indianapolis
Labor Magazine, Washington, D.C.
Library of Congress, Washington, D.C.
Louisiana State Museum, New Orleans
National Geographic Book Service, Washington, D.C.
National Portrait Gallery, Smithsonian Institution, Washington, D.C.
Wide World Photos

Our thanks to the Rowland Unified School District for the support they gave in the development of early drafts of several of these units. The materials were completed for use by two projects: the California State Department of Education, Project #6100-221-890, and the United States Office of Juvenile Justice and Delinquency Prevention, Grant #5-0125-8-CA-JN.

©1985 Constitutional Rights Foundation

Unit 1 Law in a New World: Ways to Resolve Conflict

A Mohawk leader. *Library of Congress*

This unit looks at some of the ways legal and political decisions were made during the American colonial period. A discussion of the era's most famous trials, which took place at Salem Village, ends the unit. It begins, however, with a less well-known process. The following short story is set about 300 years ago among the Cayuga, a native American people who live in what is now New York State. To make the story easier for English-speakers to read, the characters have been given simpler, though inauthentic names.

The Fever

Outside the long houses of the village, the women spoke in low, worried tones. A child whimpered and was quickly hushed. In the distance, a yapping dog chased a falling leaf. The forest rustled faintly and the waters of Lake Cayuga, glittering in the sun's last rays, lapped softly against the sandy beach.

Inside one of the lodges, light from a central fire flickered across a half-dozen wise faces. The firm voices of the old people rose and fell. At times, painful moans punctuated their cadence. They came from the other end of the bark hall, where a young man lay wrapped in deerskin and shaking uncontrollably.

Three nights ago, the young man, Oswigo, had suddenly started to sweat. His body ached. His stomach cramped. His groans woke the whole village. Oswigo's family quickly sent for a woman from the next village who was skilled with herbs and grasses. But her potions did not ease the pain.

Next, the family made sure Oswigo's desires were filled. According to Cayuga beliefs, people become ill when, deep in their souls, they want something they cannot get. Carefully, the family listened to Oswigo's mutterings. They brought him everything he mentioned—a new bow, his brother's hunting belt, even some strands of wampum. Still, the pain raged.

Now the older villagers grew alarmed. The aches and chills did not come from the common bad things which can sneak into a young man's body. The medicine would have found these and destroyed them. Nor did the pain come from desires and dreams. Only one other thing caused such harm and the elders shuddered at the thought. Oswigo had been attacked by a witch.

When the elders announced this conclusion last night, the people panicked. They had not been troubled by a witch for many years, not since before European people first appeared at the village. Still, they all understood the problem and knew what grave danger they faced.

The Cayuga people believed that a secret group of witches had existed since the beginning of time. Men, women and children who belonged to this group seemed absolutely normal. They ate and slept, worked and celebrated just like anyone else. But, in reality, these creatures wanted to destroy

the Cayuga. With a secret magic poison, they made people sicken, as Oswigo had sickened, and die.

Witches held great power. They could fly through the air and visit exotic lands. They could change into a fox, a bear or a wolf at will. Joining the secret organization and gaining these powers was terribly hard. One had to kill, with magic poison, the person one loved best. When this friend or relative died, the killer became a witch, possessed of evil.

One witch, slowly and in secret, could destroy an entire village. Because of the danger, Cayuga law punished witchcraft harshly. Anyone caught changing shape, flying or working with the secret poison could be killed instantly. If someone was thought to be a witch but couldn't be caught, the elders spoke with the accusers and the accused. If convinced by their examination, the elders gave the witch a choice: confess and surrender the powers or die.

No wonder the villagers panicked. Wild accusations flew from house to house. But the elders paid no attention. They knew that false charges were just another of the evils caused by witchcraft. Instead, they began the demanding task of finding the real witch.

The elders had been meeting for many hours now. Now and again, they summoned a member of Oswigo's family or one of his friends. As each new witness disappeared into the long house, the other villagers whispered. Was he the witch? Was she? But each witness left the long house after only a short visit and, still, no one was accused. Who could the witch be?

Inside the lodge, there was at last a long silence. Finally, a woman raised her head. "My friends," she said, "we have had no witches here for many seasons."

The other elders nodded agreement.

"We have no visitors," she continued, "who could have brought this magic with them."

Again, the others agreed.

"This poisoning, then, must be the first act of one who wants to become a witch."

"Yes," an elder responded. "That is true. And the witch is the person who loves Oswigo best."

"Here we must move slowly," the woman cautioned. "Oswigo has many friends."

"And we have questioned them," a man added quickly. "They name many names, but only one person is named by all."

"And all have given that same name," agreed another. "In childhood and manhood, Oswigo's constant companion...."

"His best friend," said the woman. "A man who has now disappeared—Aksu."

Oswigo, unconscious, groaned sharply.

Around the fire, each elder voiced his or her agreement, some eagerly, others with great reluctance. Finally, all but one had spoken. This man slowly rose.

"We have listened and pondered, with wisdom," he said at last. "What we now know as truth goes against Aksu. Though he is the son of my family, I cannot defend him." He turned toward the woman. "But Aksu has not fled. He is safe in the counsel of my brothers and sisters. I will bring him to you."

The man left and, in a few moments, four people solemnly filed into the long house. They stood facing the council—the old man, his brother, his sister and his sister's oldest child, Aksu.

"My friends," the man addressed the group, "A great evil has fallen on my family. We bring to you our son. He has confessed. He has tried to become a witch."

As the elders exchanged glances, the woman who had named the young man rose. "Aksu," she said.

The young man looked up but quickly averted his eyes.

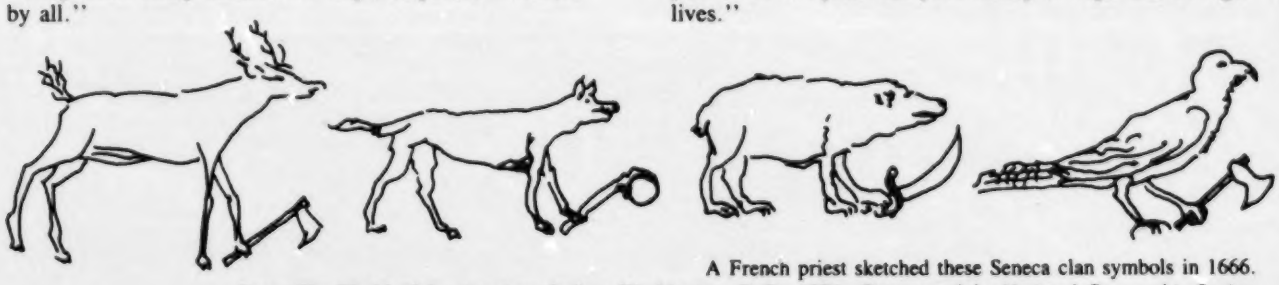
"My friends," Aksu's mother began softly. "He cannot face you. He is too full of shame and dishonor."

"The boy must speak for himself," snapped an elder.

Aksu took a deep breath and turned his eyes toward the elders. "Leaders of my village, I confess my grave crime." The young man spoke quietly and rapidly. "Through magic, I have brought sickness to my best friend. I have dishonored my family and my people."

With a faint smile, the mother unwrapped a beaded belt and handed it to the young man. "What is done cannot be undone," he continued. "This belt represents my promise never to practice witchcraft again. Keep it to remember my crime and my promise."

As the elders passed the belt from hand to hand, the woman spoke again. "You are right, Aksu, that you cannot undo your crime. If Oswigo dies, you must give another twenty belts, ten to his family for his life and ten in payment for your own. We join with your family in hope that Oswigo lives."



A French priest sketched these Seneca clan symbols in 1666.
From *The World of the American Indian*, Washington, D.C., 1974. *Courtesy of the National Geographic Society*

"You are a young man," one of the other elders added, more gently. "This is the first evil you have done. We accept this belt as token that it will be the last. Go from this house in shame."

When Aksu and his family had gone, the elders moved away from the fire. They had done well. One of their best young men had been saved from the society of witches. The village had been saved from slow death. Oswigo still shivered as he slept and they would mourn if he died. But a much graver danger, total disaster, had been very close. It had passed.

1. What is Aksu accused of? Why do you think he confessed? What would you have done in his situation?
2. Who was responsible for solving the problem in the Cayuga village? What specific steps did they take to:
   - Gather information?
   - Evaluate that information (decide what is true and what is false)?
   - Make a decision?
3. How did the elders' actions protect the village? Did they also protect Oswigo? Aksu? Why or why not?
4. When something goes wrong in a society, people need some way to find facts, determine truth, make decisions and resolve the conflict. What's the advantage of having an established process for doing this? What might happen to a society without one?

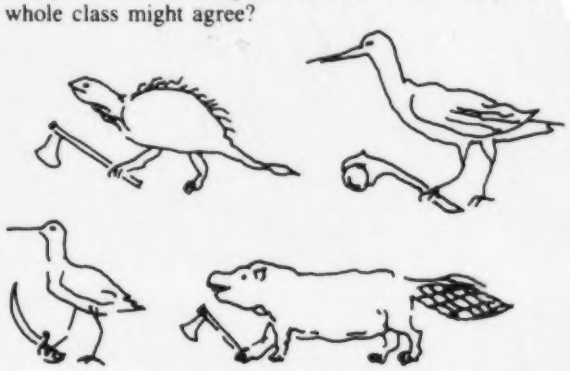
Outsiders

You are a member of Aksu's village and face another perplexing problem. The Europeans, who appear in increasing numbers, greatly value the furs of otter, beaver and other local animals. But they seem to have grown impatient with trade. This morning, you spotted three Europeans setting their own traps in the streams which flow from Lake Cayuga. As everyone knows, the right to take from these waters belongs to your village alone.

Should you destroy these trappers? Other intruders have been killed for less. You might just frighten them off, but you've heard Europeans don't learn quickly, nor can they tell right from wrong. Of course, their traps are clumsy. They won't catch much and may soon leave on their own. When they fail, perhaps you can trade your pelts for their guns. You want guns badly and only Europeans can supply them. But if you let these people stay, others will surely follow. And what about your pride?

Discuss the situation with the other villagers in your group and decide what to do. Like the elders in the previous story, you must all agree to the same solution. When you reach a decision, choose a spokesperson to explain and justify it to the rest of the class.

1. How might each solution affect your village's relationship with Europeans? Your access to guns? Your standing among neighboring villages? Your opinion of yourselves? Considering these possible results, which action should you take?
2. How did your group get people with opposing opinions to agree? Do you think your group worked with each other or against each other?
3. Can you think of a compromise decision to which your whole class might agree?



Seneca clan symbols.

People of the Long House

In our culture, reaching agreement by consensus can be difficult. Your class had certain advantages. For instance, you're all students of about the same age. Imagine trying this exercise with people of differing ages and interests—farmers, traders, warriors. Imagine people from different nations reaching complete agreement on issues of life and death. Aksu's people, the Cayuga, used a system of government designed to do just that.

Through this government, five separate nations became the most powerful native culture in the northeast. Their influence spread from the Atlantic to the Mississippi, from the St. Lawrence River to Tennessee. Their government worked so well that it lasted at least 300 years. Scolding his colleagues in 1751, Benjamin Franklin suggested that if native Americans could form such an effective union, the colonists ought to be able to do so as well.

This government, called the League of Five Nations, was created by people who lived in what is now upstate New York. They called themselves Ongwanosioni, which means the People of the Long House. Their enemies gave them a different name: the Poisoned Snakes, the "Iroquois."

Iroquois people belonged to a number of nations. Each had its own character, history, language and interests. The five in the League were:

- **The Mohawk Nation, Possessors of Flint.** (Mohawk, too, is a non-Iroquois name, awarded by an enemy people. It means Man-eaters.)
- **The Oneida Nation, People of Granite.**
- **The Onondaga Nation, Dwellers on Hill Tops.**
- **The Cayuga Nation, People of the Lowlands.**
- **The Seneca Nation, People of the Great Hill.**

People of the five nations had similar lifestyles. They lived in rectangular houses built of wooden poles interlaced with bark. The largest might be twice the length of an average

classroom. Inside each, a low shelf ringed the walls. The families who shared the lodge slept on this ledge and stored their belongings beneath it.

Long houses were often clustered on hilltops in villages of five to ten homes surrounded by cornfields. Sometimes a stockade protected the village. Every ten or twelve years, when the soil needed a rest, the people pulled up stakes and rebuilt their homes a few miles away.

The five nations were related by blood. Each Iroquois was born into his or her mother's clan (a large group of relatives, often represented by a bird or animal). Most clans had members in at least three nations. Some—the Bear, the Wolf and the Turtle—had members in all five. Thus, a Seneca of the Bear clan had family ties, however distant, with some Mohawk, Cayuga, Onondaga and Oneida people.

Equally important, the five nations held the same ideas about leadership. Like many native Americans, they had chiefs who led war parties. But Iroquois chiefs did not rule. They could not make peace. They could neither enforce the laws nor make new ones. These decisions, the decisions of government, were made by men called sachems. Sachem means not "leader" or "king," but "advisor to the people."

Each nation had a specific number of sachems, each of whom came from a certain clan. When a sachem died, or if his people no longer trusted him, the elder women of his clan met to choose a replacement. They considered the abilities and talents of their sons and brothers. They selected whoever most deserved the title.

Usually well-respected individuals, sachems acted in accordance with their own consciences. However, their real power, their ability to govern, came from decisions made in groups, decisions which had to be unanimous.

The Great Council

Despite their similarities, early in their history, conflicting interests kept the nations apart. They fought bitterly over territorial boundaries and hunting rights. They pursued long, involved blood feuds. If a Cayuga killed a Mohawk, then the Mohawk had to spill Cayuga blood. War became a game, then an art. In concentrating on their differences, the nations weakened each other and themselves.

Iroquois legend blames all this fighting on one person, an Onondaga named the Tangled Man. He was so twisted and so powerful, his very presence caused war. Unable to resist his influence, the nations' futures looked bleak.

Then, one night, a Seneca called the Untiring One had a dream. He dreamed of a Great Tree with five roots, one growing from each of the Five Nations. By taking strength from all the nations, the Great Tree grew large enough to fill the world.

Inspired by his dream, the Untiring One joined forces with a Mohawk. They used their combined strength to "straighten out" the Tangled Man. Once untangled, the Onondaga leader could think clearly. He agreed to meet with all the other sachems. After much debate, they hammered out the laws of the League of Five Nations.

Like the Great Tree of the Untiring One's dream, the new government channeled the energies of all five nations toward common goals. It accomplished this quite simply. It gave the nations a way to make international decisions which forced them to work towards agreement. Now, by law, they would find ways in which their interests fit together.

The heart of this process was the Great Council, a meeting of the sachems from all nations. Held at least once a year, the Great Council addressed issues involving international behavior. It met around a Central Fire, always located in the Onondaga nation.

League law dictated each sachem's place around the Central Fire. The Cayuga and Oneida sachems were considered "younger brothers." They sat on one side of the Fire. The Mohawk and Seneca "elder brothers" sat on the other side. Acting as hosts and mediators, the Onondaga sachems were placed at the head of the circle between the two groups.

The Great Council opened with a thanksgiving prayer. Then a speaker raised the problem under discussion. If the issue involved a foreign power, an envoy from that power might explain its request to the Council. If an accusation was being decided, both accuser and accused might present their sides of the story.

With the problem laid out, the Council began its work. The younger brothers discussed the issue first. Working in groups of three or four, they figured out how best to solve the problem. As each small group agreed on a solution, the discussion expanded to include others. The coaxing and compromising continued until all the younger brothers had reached the same conclusion.

After arriving at an answer, they "threw it across the fire" to their elder brothers. Using the same process, the Mohawk and Seneca considered both the issue and their younger brothers' solution. If their discussion led to agreement with the younger brothers, the process stopped. The Council had made its decision.

Though not unknown, agreement at this stage was unusual. Because they lived at the edges of the League territory, the Seneca and Mohawk often saw things very differently than their younger brothers. When the two groups disagreed, both answers crossed the fire to the Onondaga sachems.

The Onondagas were free to take one side or the other. Usually, though, as the League's geographic and political center, they strove for compromise. On what issues, however slight, did the younger and elder brothers agree? If used as building blocks, to what solutions did these areas of agreement point?

The Onondaga answer was thrown back across the fire to the elder brothers and, then, the younger. Again, both groups discussed until they reached agreement. If necessary, the issue made a final trip to the Onondaga.

To work, the Great Council had to be approached in the right spirit. Individual opinions and disagreements were

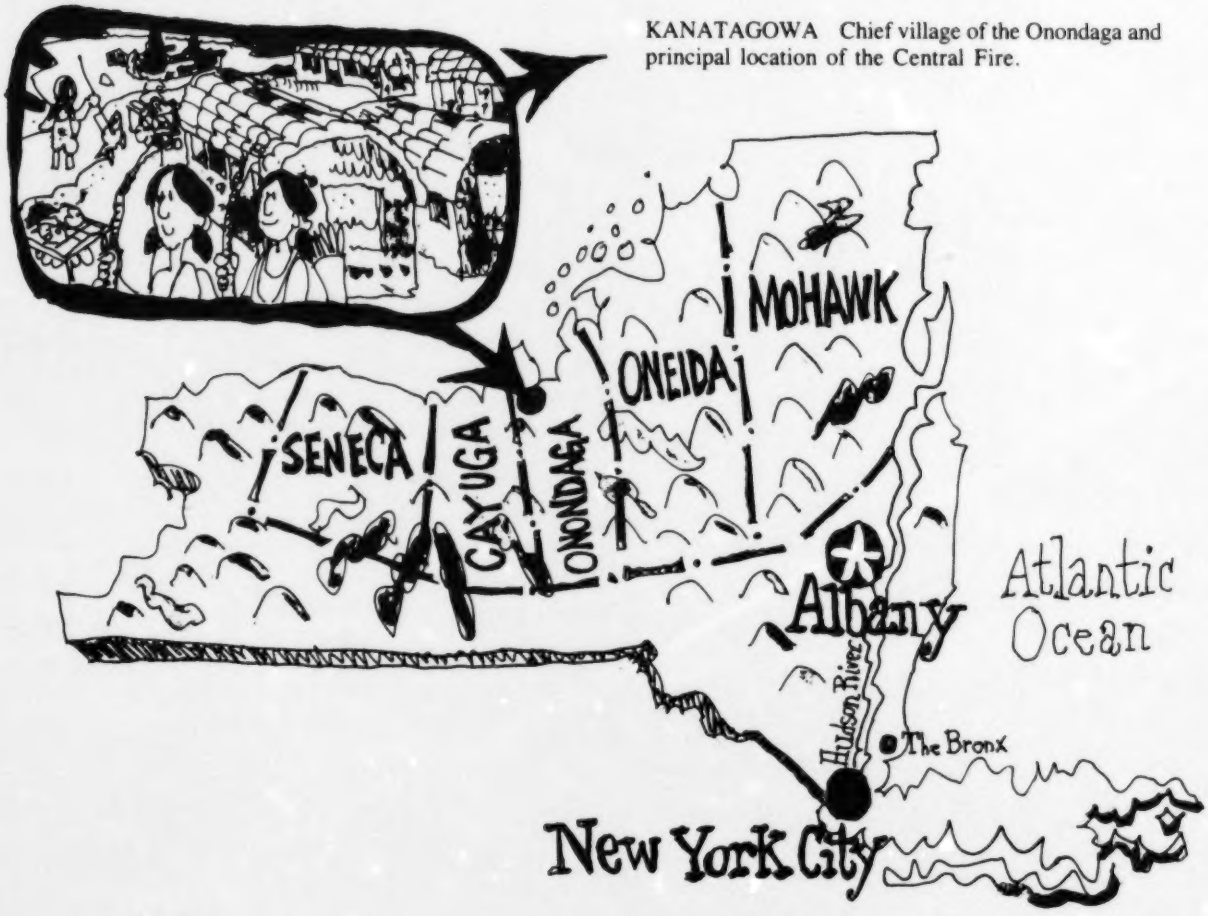
welcome. Insults and threats were not. To set the proper mood, sachems did not eat with sharp knives or use axes during the Great Council. Nor were chestnut logs burned in the Central Fire. They threw off too many sparks.

The total agreement or unanimous consensus which resulted from this process was very important to the Iroquois. However, so was the independence and free will of each sachem and nation. One could not be expected to obey or even understand a decision with which one did not agree. If total agreement could not be reached, the question was abandoned and the Council dismissed. This, too, occurred only rarely. Cooperative attitudes and thorough discussion usually turned up some answer which all, however reluctantly, could support.

The Untiring One, however, had allowed for the possibility of failure. If ever the Great Council stopped working, League laws called for a meeting of the women of the five nations. They were to find out who was causing the trouble. If the erring sachems did not respond to a warning, the women were to order their deaths. There is no record that the council of women ever met.

1. With your class, brainstorm a list of leadership characteristics: the skills and attitudes that make a good leader. Which of these qualities would the Iroquois have looked for in a war chief? In a sachem?
2. Are these the same qualities you'd look for in a leader who makes decisions in our society, such as a Congressperson, a judge or the President? Why or why not?
3. Most Europeans passed inheritance directly from father to son. But Iroquois family beliefs connected children with their mothers. A sachem's sons, for instance, could not inherit his role. What are some advantages to the Iroquois system of inheriting leadership?
4. Today, the People of the Long House are most widely known as the Poisoned Snakes; the Possessors of Flint as the Man-eaters. How and why might these name changes have taken place?

KANATAGOWA Chief village of the Onondaga and principal location of the Central Fire.



The People of the Long House (circa 1600) *Drawing by Richard Stein*

Through European Eyes

Historians do not agree about how the League of Five Nations began. Some support Iroquois legend, suggesting that a few men of genius created the basic system, possibly to solve a crisis. Others think it developed more slowly out of a long-term need for central government. Three nations united. After learning how to work together, they added a fourth and so on.

Nor do scholars know when the League began. Dates range from as early as 1450 to as late as 1660. In 1535, when the French first sailed down the St. Lawrence River, the Iroquois already controlled most of New York. Early French records mention the Iroquois, but not the League. Had it not yet been formed? Or were the Europeans too prejudiced to see advanced government among the "lawless heathen"?

Besides, French reports about the Iroquois are suspect. The two peoples got off to a bad start. An early French explorer, Samuel de Champlain, made friends with the Algonquins and Hurons who lived north and west of Iroquois land. His allies bitterly complained of "demons" to the south. If not for these man-eaters, they could trap even more furs for the French.

In June, 1609, Champlain helped his allies fight off a "demon" raid. "Our Indians," he wrote, "told me that those who carried lofty plumes were the chiefs and that I should do all I could to kill them." French bullets easily pierced the enemy's arrow-proof armor. Shocked and shamed, they fled.

The Mohawk "demons" never forgot the slaughter. They never forgave the French. For the next 150 years, they urged the League to drive France from North American soil.

Holland, too, encountered Mohawk warriors early on. Around 1626, while setting up their New Amsterdam trading post, the Dutch helped a local people attack the Mohawk. This time, in spite of European weapons, the Mohawk won. True to custom, they tortured some of their captives, eating the heart of the bravest.

The Dutch quickly developed a healthy respect for the Mohawk. Unlike the French, they had little interest in converting the "heathen" to Christianity. Instead, they focused on trade and relations improved. Through their contact with the Mohawk, the Dutch soon formed strong bonds with the other nations. By the 1640s, regular, profitable trade flowed between the two peoples.

Then, after losing a war in Europe, Holland had to give New Netherlands to England. Thus far, the British had managed to offend many of the native Americans they'd met. Now, arriving in New "York," they found they'd inherited a strong friendship with one of the most powerful peoples on the continent. Their new native American friends controlled most northeastern waterways. They could funnel the fur trade through British rather than French settlements. To secure their good fortune, in 1679 and again in 1684, England signed "protective" treaties with the League.

Alliance with the Iroquois greatly strengthened England's position in North America. But the treaties themselves caused some misunderstandings. The British thought they'd signed peace treaties which made the Iroquois subjects of the British crown. To the Iroquois, only conquered peoples could be subjected to foreign authority. They had agreed to help protect the British in return for British help against the French—no less, but no more.

Behind this confusion lay two very different ideas about the nature of war and peace. Europeans, at least officially, had peaceful relations with other nations until they declared a state of war. The League held almost an opposite view. The League was technically "at war" unless it declared a state of peace. Everyone with whom the League did not have a formal peace agreement was fair game for a raid.

Moreover, the League itself did not fight wars in the European sense. Normally, the Great Council did not order war chiefs to attack villages or conduct battles. These decisions were almost a private matter, left up to individual chiefs and soldiers. When a war chief saw an opportunity to fight, he signaled the local warriors, each of whom could join or not, as he pleased. If too few soldiers wanted to follow, the raid did not take place. Women could also prevent a battle by refusing to provide supplies.

Respect for voluntary participation in battle was so strong that individuals were not even bound to obedience during the actual fight. The Iroquois greatly valued military skill and courage. They also understood the importance of cooperation. But if a leader's instructions seemed ineffective or, worse, foolhardy, the warriors could do as they thought best.

By contrast, Europeans ordered soldiers to fight. Disobedience under fire could result in a penalty of death. Bred to traditions of obedience as well as valor, European officers were linked by chains of command to their political leaders. Most Europeans did not even perceive the Iroquois methods, much less understand how or why they worked.

The 17th century gave way to the 18th, and Europe continued to quarrel over America's wealth. As an important continental power, the League could not avoid some entanglement. But the specific balances of power and alliance had yet to be worked out. Could the League use its cultural differences to advantage? How could it best protect its interests?

Keepers of the Central Fire

Within the League, Onondagas were known as Keepers of the Central Fire. This title reflected the nation's responsibility for maintaining the actual hearth around which the Great Council met. It also symbolized their vital role in Council decision-making. By skillful mediation, the Onondaga maintained the League's political center.

During the 18th century, the League made dozens of critical decisions. As they faced the situations described below, Onondaga sachems had to suggest solutions which would meet all the nations' needs. While working through these cases, put yourself in their place. Try to find the compromises.

Case 1. Though their soldiers continued to plunder Mohawk and Seneca villages, some French colonists decided their hostility toward the League was a big mistake. Hoping

for a greater share in the League's rich fur traffic, French traders began wooing the Seneca. To secure cooperation and greater wealth for all, they recommended peace between the League and France. French missionaries, at work in all five nations, supported this suggestion.

In 1697, France and England agreed to an uneasy peace. At once, British soldiers secretly warned the League against French treachery. They urged the Mohawk, in particular, to avoid any dealings with France. However, officially, to please their French friends, the British refused to give Iroquois warriors any more guns. This policy deprived the League of weapons for defense.

Soon thereafter, the French government formally proposed a peace treaty. Seneca sachems favored some alliance. Now that the British had halted the weapons flow, they needed protection for their people's main resource, the fur trade. The Mohawk, on the other hand, insisted on their right to raid the French at will.

Sagoyewatha, known as Red Jacket. *The Bettmann Archive, Inc.*

The Solution. In 1701, the League agreed to treaties with France which guaranteed League trading rights in the Detroit area. France also acknowledged the League's claim to lush trapping lands north and northwest of Lake Erie. Finally, France promised not to invade League territory during any future wars with England. In return, the League promised to remain neutral should such wars break out.

1. As they approached the Great Council which met to resolve this problem, what did the Seneca want?
2. What did the Mohawk want?
3. How did the solution chosen by the Great Council meet these nations' needs?

Case 2. By the middle of the century, England and France were once again at war, fighting for control of the Ohio River Valley. The initial success of France and her native American allies greatly impressed four of the five nations, all but the Mohawk. Though the League itself stayed strictly neutral, the four nations visited Montreal and assured the French governor of their friendship. Seneca soldiers even helped the French out once or twice. For balance, though, the Mohawk convinced Oneida and Onondaga war chiefs to join one small battle on the British side.

For a while, French victory seemed certain. In one battle, the French and their allies took on an English force five times their size and slaughtered a tenth of them. Then, the English replaced their commanding officers and the tide turned. Suddenly, the British began to win.

Taking advantage of their success, the British decided, in 1759, to seize Fort Niagara, a French trading post in western Seneca territory. To do so, they had to march their troops across almost the full length of Iroquois land. Since these actions would violate League neutrality, British officers appealed to the Great Council. They asked the League to permit the march and to join them in the attack.

When the Council began, the nations were united in one desire. As much as possible, they wanted to keep any actual fighting off League land. The Seneca, however, insisted that the League make sure Fort Niagara, a vital trading site, stayed in friendly hands. Seneca warriors were willing to fight for this goal. The Mohawk, though, relished another chance to beat the French and urged the League to abandon neutrality.

The Solution. Unable to muster unanimous backing for either side in the war, the League decided its security rested in the active support of the side that was winning. Not only did they let the British pass through their lands, but warriors from all five nations joined in the battle. However, only the Mohawks took part with any real fervor. The other nations held back until they were sure the British would win.

1. How does the Council's solution help accomplish the nations' goals?
2. At the beginning of the Council, the Mohawk favored the British and the Seneca favored the French. Why, then, isn't continued neutrality—League refusal to support either side—the best compromise solution?
3. Why do you think the League didn't throw its full weight behind the French instead of the British?

Case 3. It is 1775. England is beginning a new war with her own colonies. Both sides want the League's help.

A British colonel, Guy Johnson, is related by marriage to Mohawk sachems. Knowing that New Yorkers have unjustly taken more than 80,000 acres of Mohawk land, Johnson encourages distrust of the colonists. He convinces the Mohawk that only continued British rule will prevent further swindles. He urges the Mohawk to undermine rebel friendship with the other nations. Ultimately, Johnson hopes the entire League will fight for the British.

However, Samuel Kirkland, a missionary to the Oneida, has long favored the colonists' side. He tells the Oneida and other nations of the colonists' complaints, describing them

in the most positive light. On behalf of the Continental Congress, he keeps the League informed and tries to establish some kind of alliance.

Johnson is increasingly fed up with Kirkland's interference. Though now in Canada, he has threatened to arrest Kirkland on his return and execute him.

Alarmed and offended by this threat to their friend, the Oneida say they must protect Kirkland as long as he is their guest. The Seneca fear that Kirkland will be harmed. The colonists, they say, will blame not Britain but the League. All the nations agree that the League cannot afford to take sides in the war. Even the Mohawk agree that Johnson's attitude threatens neutrality. However, the Mohawk point out that they cannot control Johnson and that armed conflict with a British officer will also destroy neutrality.

Step 1. After reviewing the case, work with your group to identify what the Mohawk, the Seneca and the Oneida want. Write a one-sentence description of each nation's goal.

Step 2. Consider the following solutions:

a. Ask the Oneida to expel Kirkland. His agitation for the colonists is as dangerous as Johnson's pro-British propaganda.

b. Tell Johnson that if the British want League friendship they will leave Kirkland alone. If he attacks Kirkland, the League will resist him.

c. Warn Kirkland that he must protect himself. You must not get involved in this squabble; it could well lead to involvement in the war.

As a group, discuss how each of these choices will affect the nations' goals. If you chose (a), will the Seneca get what they want? The Mohawk? The Oneida? Repeat this process for all three options.

Step 3. Based on your discussion, can you think of a fourth option which will better meet the nations' needs? If so, what is it?

Step 4. Which solution will you, as Onondaga sachems, support in the Council? Why? (You may choose one of the above or one of your own.) Appoint a spokesperson to present your decision and reasoning to the class.

1. What might have happened to the League if the Great Council had not been compelled to reach unanimous consensus about these decisions?
2. Do you think Iroquois ideas about warfare contradict their ideas about government? Why or why not?
3. The American Revolution effectively destroyed the League of Five Nations as a continental power. Why do you think this happened?
4. Unanimous consensus is only one of several ways of making group decisions. What other methods might be used?
5. At Buffalo Creek, New York in 1821, a Seneca executed a witch convicted under Iroquois law. His European-American neighbors, horrified at the "superstitious" practice, accused him of murder. At his trial in a New York court, Sagoyewatha, a brilliant orator known to European-Americans as Red Jacket, spoke for the defense:

> You would now punish an unfortunate brother for adhering to the opinion of his forefathers. Go to Salem! Look at the records of your government. . . . What have we done more than the rulers of your people have done? And what crime has this man committed by having executed in a summary way the laws of his country and the injunctions of his God?

Do you agree with Red Jacket? Or should the man be convicted of murder? Is it fair to try him under Anglo-American law? Explain your answers.

A view of the Salem witch trials from *The Romance and Tragedy of Pioneer Life*, 1883. *Library of Congress*

Another Part of the Forest

Though based on real information, the first reading in this unit, "The Fever," is fictional. At about the same time and 700 miles east, a different culture confronted the same problem. Written records of what happened at Salem Village in 1692 still exist.

In January, 9-year-old Elizabeth Parris and her cousin Abigail Williams fell into fits. They twitched and writhed. They screamed from pinches and pains. They could not see, then hear, then speak. Their tongues rolled back in their throats or out of their mouths. Their jaws dropped out of the socket, then suddenly, like bear traps, snapped shut.

Elizabeth's father, Samuel Parris, the minister of Salem Village, knew the symptoms. He had read of a similar case, in Boston, only four years before. So had other local ministers. Salem's doctors had first-hand experience with the illness. Over the years, several local children had been stricken. Ministers and doctors alike recommended the same treatment. Only through prayer and fasting could one cure the bewitched.

Quietly, the treatment proceeded. It did little good. Meanwhile, Parris searched for clues. The girls, he found, had been seen with Tituba, a slave from the West Indies. Further, she'd been teaching them how to read palms. Other girls went to these classes. Soon they, too, began to twitch and fall. Frightened, Tituba tried to cure them with more magic.

These discoveries chilled Parris. Like most New England settlers, he believed witches acted as agents for Satan, a devil who struggled with God for human allegiance. To become a witch, a person made a pact with Satan. Satan gave the person power to fly, change shape, create or destroy belongings, and help or harm others. In return, the devil got the witch's soul.

With each new witch, moreover, Satan gained another agent to tempt humans and recruit more witches. In New England, the presence of witches meant, worse than death, the utter loss of people's eternal souls. To Parris and other authorities, the girls' fits, the fortune-telling, Tituba's spells could mean but one thing. The worst had happened. Witches were now at work in Salem Village.

On February 29th, the sheriff arrested the first three suspects: Tituba, a penniless outcast named Sarah Good, and Sarah Osborne, a woman who defied the law by refusing to attend church. Two magistrates questioned these women and a dozen witnesses, including the afflicted girls. Both Sarahs denied the charges, but Tituba broke down. Yes, she practiced witchcraft. Yes, she willingly named the names of other witches with whom she worked.

More people were arrested or questioned. The list of witches grew. The magistrates turned their information over to a grand jury. This group of prominent citizens decided there was enough evidence that the accused people committed acts of witchcraft. They began to issue indictments, formal accusations of crime.

To prove their innocence, the accused and their friends demanded swift trials. The victims and accusers also wanted rapid justice. But here Salem hit a snag. Judges and courts to try the accused were not yet available. By law, witchcraft judges would have to be appointed by the colony's legislature, called the General Court. And it wasn't going to meet again for six months.

In mid-May, a new governor, William Phips, arrived from London. By then, Salem's jails were overflowing. Governor Phips had to do something, and quickly. On May 29th, he appointed a Special Court of seven judges to try the witches. Lieutenant-Governor William Stoughton served as chief judge. Four days later, the court heard its first case.

Bridget Bishop owned a local tavern. Her flashy clothes and style kept her name on gossips' tongues. She'd been accused as a witch twelve years before, but that came to nothing. Now, five of the afflicted teen-agers raised her name again. In May, a confessed adult witch then in Salem prison also accused her. Bishop was indicted.

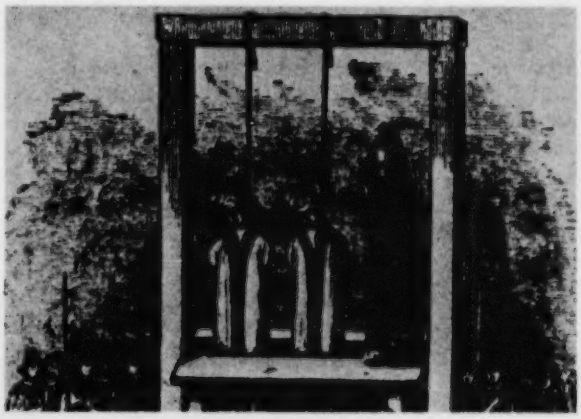
At her trial, though a few people appeared to speak against her, most of the evidence was in written form. The judges read sworn statements taken from witnesses. They reviewed a written account of the answers she had given when examined by magistrates. The judges learned:

- One witness had overheard a quarrel between Bishop and her husband. Bishop's husband said his wife "sat up all the night long with the Devil."
- Seven years before, a workman found rag dolls stuck with pins while cleaning Bishop's cellar.
- A pious woman, angry that Bishop was letting youngsters play Shovelboard in her tavern, threw the game pieces into the fire. Soon after, the woman lost her wits and began to have fits. She accused Bishop of bewitching her. Then she killed herself with a pair of scissors. A witness claimed the woman could not, "with so short a pair of scissors, mangle herself so without some extraordinary work of the devil or witchcraft."
- A teenager, in a vision, saw two dead little boys accuse Bishop of their murder.
- John Londer had a fight with Bishop about her chickens wandering into his master's garden. That night, Bishop's image tried to choke him in his sleep. Later, a monkey with a man's face and clawed rooster feet jumped into his window and struck him dumb for three days.

Avowing total innocence, Bishop claimed she'd never even met some of the witnesses. Yet more than 30 people swore they'd seen or heard her perform witchcraft. They told similar stories about Bishop's behavior. A majority of the judges, led by Stoughton, decided she was guilty. The court convicted Bridget Bishop and sentenced her to hang.

While making this decision, the judges began to argue. Some thought the evidence unreliable. One quit. The disagreement made Governor Phips wonder how or even if to proceed. He asked the colony's ministers for moral support. In their opinions, how should witches be tried? What kind of evidence could be trusted?

Unfortunately, Phips didn't wait for an answer. Another pressing problem, French and native American attacks, demanded immediate attention. He rode off on a summer campaign, leaving the government to Lieutenant-Governor, now Judge Stoughton. Stoughton immediately ordered Bishop's execution and saw her hanged.



"The Salem Martyrs." *The Bettmann Archive, Inc.*

Arrests and trials continued for the rest of the summer. Nineteen people and two dogs were hanged. A 20th victim, Giles Cory, was pressed to death. Cory had been indicted, but refused to respond. To force him to answer, the sheriff placed increasing numbers of heavy stones on a board laid across his chest. If Cory had responded and been convicted, the state would have taken his property. He was nearing the end of a long life anyway. As long as he did not answer, his family could still inherit.

By early fall, however, rumor reflected growing uneasiness with the proceedings. It was said that one girl had only named people "for sport." Another claimed she'd been told who to accuse. Was it true that the sheriff and magistrates tortured suspects to get confessions? Those who confessed had not yet been hanged. Why were those who resisted killed so quickly? A judge's mother-in-law had been accused repeatedly. Why was she not arrested? How could so many good people be witches? Even the Governor's wife had been accused.

Some of the judges' basic beliefs about witchcraft came under fire. For instance, the judges held that witches could not take on the shapes of innocent people. Nor could the devil, through magic, create evidence which might harm the innocent.

Several clergymen, among them Increase Mather, disagreed. Mather argued that "devil's marks" and magical evidence should not be trusted. The devil created magic. Would he not use it for his own ends, the destruction of the innocent? Nor, continued Mather, should one place too much faith in statements from confessed witches or those afflicted by witchcraft. Both groups, after all, were clearly influenced by the devil.

Though he did not condemn the judges, Mather begged them to use caution. Certainly, magical evidence gave good cause for suspicion. Along with other evidence, it might build a case. But it was not conclusive. Freely given confessions were the only absolute proof of witchcraft.

Governor Phips returned from his wars to a heated debate between judges and ministers. Phips sided with the clergy. He halted arrests and executions. Soon thereafter, he dissolved the Special Court.

The prosecutions did not immediately end. At its regular November meeting, the legislature created a new court to hear the remaining cases. By law, this new court could give very little weight to magical evidence. It tried 52 people in January, 1693, but only convicted 3. Though sentenced to die, none were hanged. By April, even the convictions stopped. In May, the Governor issued a general pardon to all those accused.

Over the next few years, the colony repented. Salem Village drove Samuel Parris from its pulpit. In 1697, the colony observed a day of general fasting. A judge confessed his error in church. Some grand jurors asked public pardon. In 1711, the colony even returned some of the money taken from those executed. It also reversed some of the convictions. Bridget Bishop's was not among them.

1. Who was responsible for the Salem witch trials? How did they gather information? Evaluate information (decide what was true and what was false)? Make a decision?
2. How did New England beliefs about what witches wanted and what they could do differ from those held by the Iroquois? Did these different beliefs affect the way the two peoples responded to their witch problems? If so, how?
3. Though steeped in the long tradition of English common law, the Salem colonists had not yet fully established their own legal processes. How did this affect them during the witch trials?
4. Europeans had feared witches for centuries. Trials, with the common (though by no means automatic) result of death sentences, occurred frequently. Yet, in 1711, not quite 20 years after the Salem witch trials, the people of Massachusetts decided they were wrong. Why do you think they made this decision?
5. It is 1690 and you have been charged with witchcraft. You are innocent. Given a choice, would you rather be tried by the Iroquois or the people of Salem? Why? What if you are guilty?
6. Imagine you are a judge at the Salem witch trials or a grand juror issuing indictments. Would you support the community's response to the witch problem? What could you do to oppose the community or change its behavior?

Making Decisions

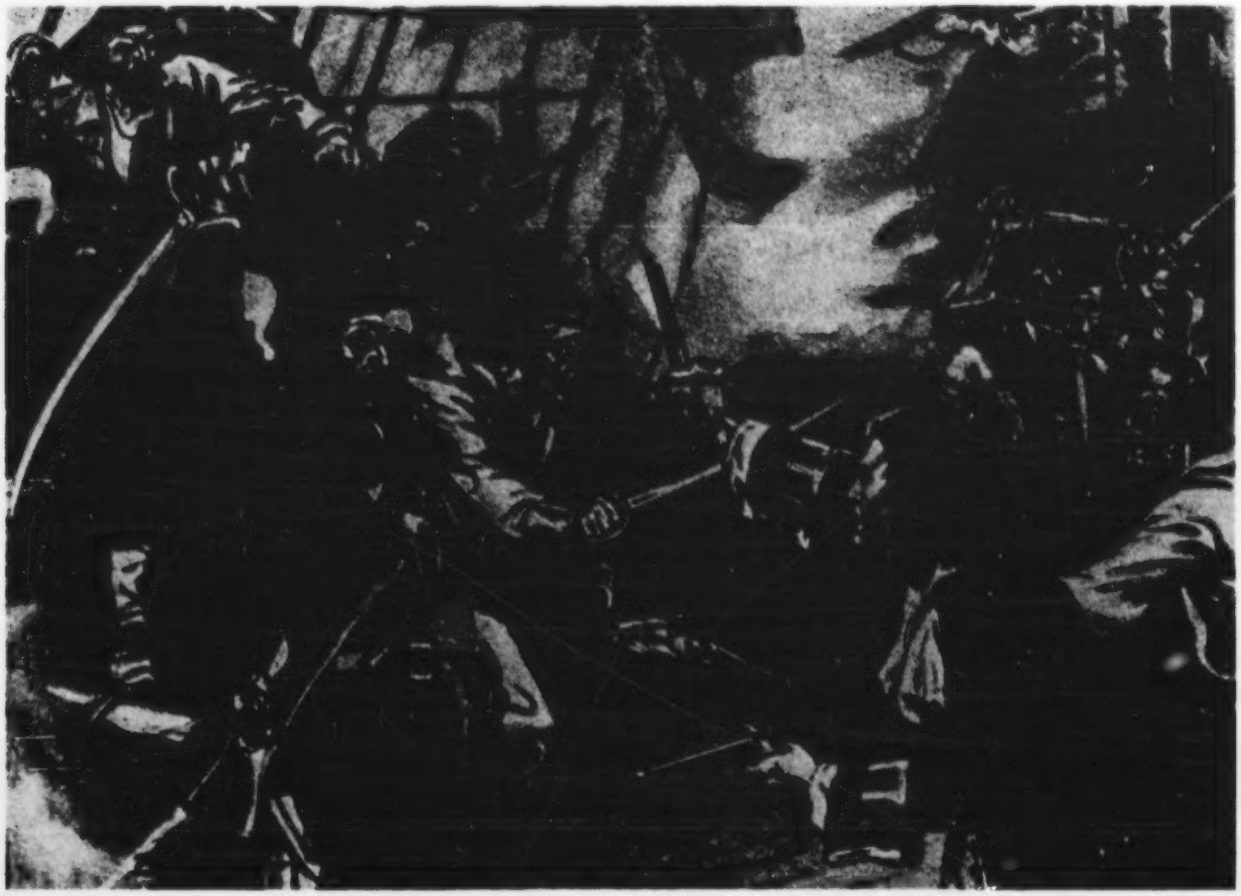
Think about the following situations.

- **A school principal or vice-principal decides whether to suspend a student.**
- **A Student Council decides how to spend Student Body funds.**
- **A Municipal Court rules on a civil or criminal trial.**
- **A City Council decides whether to pass a resolution.**

In each case, people have been given responsibility for solving a problem. How do they gather information? How do they evaluate it? How is their decision made?

To help you find out, your teacher will divide the class into research teams and assign one process to each. Working with the others in your group, plan and execute an investigation. Include a visit to observe the process in action and at least two interviews with appropriate participants. Present your findings to the class.

1. Which of these methods do you think gathers the most accurate information? Why?
2. Which makes the best or the most fair decision? Why?
3. Do you prefer any of these processes to the Iroquois system? To the Salem system? Why or why not?



British pirate Edward Teach, known as Blackbeard. *The Bettmann Archive, Inc.*

Illicit Traffic

Picture a small ship with wide sails, dancing on the waves. A bearded man, earring dangling, stalks its deck. Above, a lookout is glued to the topmast. Suddenly he cries, "A sail!" The small ship chases down its larger prey and cannons roar. A few cutlass thrusts later, the new ship looted and in flames, a triumphant skull and cross-bones is hoisted in the breeze. Afterwards, on a lonely beach, a treasure chest drops into a pit dug deep in the sand, followed by an unlucky sailor, condemned to guard it forever.

Such images may be romantic; piracy was not. After winning a battle, pirates took the ship, its entire cargo and often all the lives on board. Colonies lost desperately needed supplies. Home countries lost the raw materials on which their economies depended. Already hazardous voyages became even more risky.

Piracy could kill sea trade; it could also kill pirates. Most nations promptly hanged men and women caught in the act. Sometimes even those just suspected of the crime got the same treatment.

Piracy emerged with long-distance sea trade. The need to move valuable goods across empty oceans gave pirates both motive and opportunity. Often, they attacked legal shipments: fine cloth and spices heading for Europe, raw gold moving to Spain, pay and supplies for soldiers in lonely New World outposts. Sometimes pirates preyed on smugglers, people involved in a trade as illegal as piracy itself.

Today, as in the past, governments regularly control trade. Certain goods, such as illegal drugs, may not be bought or sold at all. Other goods can only enter or leave a country in small amounts. Currency and archaeological treasures are examples. Most goods are allowed to move freely across borders, but only after the government is paid a tax or "customs duty."

In quick response to these limits, illegal trade often springs up. Someone finds a way to supply forbidden goods and evade official quotas and taxes. To take part in this trade—to bring goods into an area, or take them out, in violation of the area's laws—is to smuggle.

Normally, law helps settle disputes between buyers, shippers and sellers. But what if a drug smuggler refuses to pay

his supplier? What if a truck carrying forged designer jeans is hijacked? What if pirates seize a gold ship which slipped out of port under cover of darkness, its final destination "unknown"?

Those who do business outside the law must be prepared to enforce their own deals, often with violence. Sometimes, they only buy from and sell to those they can trust or intimidate. Underground organizations develop to control suppliers who make, buy or steal a product and those who transport it or sell it to the public. The lines between producer, pirate, smuggler and merchant blur.

Illegal trade networks create special problems. For example, how should government treat consumers, without whom illegal trade would vanish? Buyers can be from an identifiable and shunned class such as drug addicts. Others are wealthy collectors of rare art, antiquities or jewels. Most often, they are simply people looking for a great deal on a tape player, a handbag, a record or video.

How best to attack these networks is another tough question. Police may find the arrest of one or even a dozen carriers futile. They know the small fry will be quickly replaced. One way of going after the "brains" is to infiltrate the group. Another is to convince criminals to give evidence against their bosses. Both these methods can be dangerous.

A more extreme dilemma surfaces in times of crisis. When desperate, governments may be tempted to turn to outlaw networks—powerful, organized and armed—for help. Medieval towns, for instance, bought protection against invaders from local banditti. This unit begins by looking at a time when the young United States faced such a choice.

1. Pirates and smugglers seem figures from a distant past. What kinds of goods are traded illegally today? Who is involved in this traffic?

2. Should honest citizens or the government ever cooperate with illegal traders? Under what circumstances? To what extent?

   a. At the corner gas station, a man is selling name-brand designer jeans out of the back of a van. He says he got them wholesale. He's only asking half the price they're going for at the mall. He's got a pair in your size. Should you buy it? Why or why not?

   b. You have no idea why, but your younger sister desperately wants an old Van Halen record for her birthday. The record store says Van Halen never publicly released that title. A friend of a friend claims she can get it for you. Should you order the record? Why or why not?

   c. For months, government agents have been tracking a group which over the years has laundered almost $200,000,000 for a crime syndicate through foreign banks. Perhaps realizing the jig will soon be up, a member of the group calls the agents. He's willing to testify. He'll spill everything. In return, he wants complete immunity and full protection, including relocation and a new identity. He won't bargain. Should the agents accept the deal? Why or why not?

Library of Congress

Old New Orleans

In the 1780s, with the Revolution won, Americans turned west. Small clearings in the thick woods of Ohio, Illinois and Kentucky became working farms. Settlers soon produced more tobacco, grain and pork than they needed. Hungry cities on the eastern seaboard were eager for these extra goods. But imagine lugging tons of flour back over the mountains!

Instead, farmers loaded their produce on keelboats and rafts. Down the Mississippi they floated until, just as the river took its final lazy turn, the outskirts of New Orleans slid into view. Warily, the Americans docked their rough craft. They set out on foot for the heart of the strange city.

By frontier standards, New Orleans was already old. Founded in 1718, its first French settlers had been joined by German peasants, by "Cajuns" (French colonists forced out of Nova Scotia by the English) and by African slaves. In 1763, the Spanish took over, bringing high society to the city. They mingled with its people, creating a unique ethnic group—the Creoles. "Free people of color" (people of mixed European and African ancestry) also played important roles.

To Americans from the Ohio River Valley, the people of New Orleans seemed alien. They spoke a strange, light language. They lived by rules very different from the pioneer codes the keelboaters obeyed. To add to the mystery and danger, the Americans knew they were in town on illegal business.

Because of Spain's economic policy, Spanish colonies such as New Orleans were only allowed to trade with the mother country. Local merchants could not buy from the American Midwest. They could not ship American goods through the port for sale in Charleston, Boston or New York. Both Midwest farmers and New Orleans traders resented these

laws, which enriched only Spain. Smuggling soon became a common, even an honorable way to get around Spain's "unreasonable" regulations.

In 1803, for only $15 million, the U.S. bought New Orleans and another 828,000 square miles of land. The Louisiana Purchase opened legal trade between New Orleans and the Midwest. The smuggling should have stopped. It didn't. Illegal traffic was already a way of life. The new U.S. customs duties seemed high. Why pay them when you could easily sneak goods through New Orleans?

From the start, New Orleans had grave doubts about being part of the United States. What did she share with New England, Virginia or New York? Not background, not culture, not even language. When the area's new governor, William Claiborne, arrived, his style made matters worse. He dawdled about learning the city's language and customs. New Orleans citizens, in turn, dragged their heels about helping the U.S. combat illegal traffic. The whole city, it seemed, openly traded with smugglers and protected them.

"Occasionally, in conversation with ladies," Claiborne complained to his superiors, "I have denounced smuggling as dishonest. Very generally [they] reply, 'That is impossible. My grandfather, or my father, or my husband was, under the Spanish government, a great smuggler. He was always esteemed an honest man.'"

In 1808, Congress added to Claiborne's difficulties. As a first step toward ending slavery, Congress passed a law. No more slaves could be brought into the country. Slave owners resented this new law. They reacted just as New Orleans had reacted to "unfair" Spanish laws. Smuggling slaves became big business, up and down the eastern seaboard and, of course, in New Orleans.

Outlaw Emperor

On a Saturday morning in 1812, a ragged American sailor arrived in New Orleans. His name was William Patterson. His ship, the *Independence*, out of Salem, had just been to the African coast. On her way back, she stopped in Cuba. As the *Independence* left Havana Harbor, a strange vessel slid into view. It followed her a while. Then, without warning, it attacked.

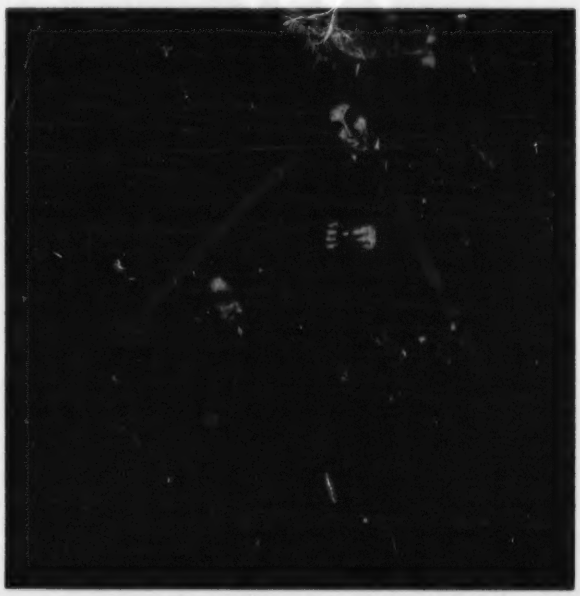
After a brief, fierce battle, Patterson watched the pirates plunder the cargo (which he would not describe) and brutally murder the crew. As a last hope, he flung himself overboard. By a miracle, he washed up on a Cuban beach, the lone survivor of the *Independence's* last voyage.

This shocking story spread quickly through the city. Each new listener responded with the same name: Lafitte.

The Lafitte brothers, Jean (pronounced "Jon") and Pierre, owned a blacksmith's shop. But everyone knew they dealt in a lot more than iron. Did you want silk? Cinnamon? A slave or two? Drop by to see Jean and Pierre. They had the scarcest merchandise at the best price. And Jean was so charming.

The Lafittes got their start in New Orleans as "receivers," merchants dealing in smuggled and illegal goods. To avoid customs, many ships docked and unloaded below the city at Grande Terre Island in Barataria Bay. To pick up extra cash, part-time smugglers, mostly fishermen and trappers, moved these cargoes to New Orleans. They knew every secret path through the bayous of the southern coast. They could easily dodge the customs men. Smugglers' profits sharply rose after the slave trade was outlawed. By 1810, the Lafittes had seized control of the entire operation. But their thriving business soon faced a serious threat from across the Caribbean.

The islands of Guadeloupe and Martinique fell to the British, who forced the swarm of privateers and pirates based there to find new homes. Many decided to move to Grande Terre Island. The smugglers resisted and a fierce gangster-type war broke out. Jean Lafitte emerged from that bloody summer *bos* of both groups.



Allegedly, Jean Lafitte, Pierre, *standing*, and Dominique You, *right*. By J.W. Jarvis, 1812. *Courtesy of Louisiana State Museum*

Rumors filled the streets and byways of New Orleans. No contraband moved, it was whispered, no weapons changed hands, no ship sank except on orders from Lafitte. The people of New Orleans believed he controlled the entire Gulf of Mexico. Strange crimes were said to unfold on the beaches of Barataria. And though his ships never left the Gulf, Lafitte always had African slaves for sale. Where did they come from? People wondered if the pirates who attacked Patterson took orders from Jean Lafitte.

Lafitte denied everything. He knew nothing of the *Independence* or her fate. He was a businessman. Yes, he had a few ships. But they were engaged in legal activities. Within the week, local officials issued a report. The *Independence*, an American ship with a cargo of illegal slaves, had been attacked by pirates unknown. The report did not accuse Lafitte. William Patterson quietly disappeared.

An outraged Governor Claiborne felt sure Lafitte was behind the whole bloody business. Why would no one help

him catch the man? Over and over, Claiborne begged the territory's legislature for troops to wipe out the Baratarian stronghold. They always refused. He persuaded the federal grand jury to bring charges against Lafitte; no one would turn him in. Desperate, the Governor placed a $500 reward on Lafitte's head. A few days later, other posters plastered New Orleans. Signed "Jean Lafitte, Bos of Barataria," they offered $1,500 reward for the Governor's arrest.

Meanwhile, other serious issues demanded Claiborne's attention. His territory had asked for statehood. Congress showed reluctance to admit "foreigners of doubtful allegiance." Claiborne hurriedly organized the American community in New Orleans. Their lobbying paid off. On April 30, 1812, Louisiana joined the union. Just 50 days later, the U.S. declared war on Great Britain.

1. Even after the Louisiana Purchase, many people in New Orleans didn't view the U.S. as "their" country. Why not?
2. Look at a map of the U.S. What effect did geography have on New Orleans' development as a smuggling center?
3. Why do you think New Orleans' long-term residents admired and protected Jean Lafitte? Are similar people viewed in a similar way today?

A New War

The seeds of the War of 1812 were planted in Europe. France and Britain were at war. To destroy England's economy, France closed Europe to British trade. France also excluded ships from neutral countries, like the U.S., if they carried British goods, visited British ports, or had been stopped by British warships. England fought back by seizing neutral ships caught trading with Napoleon's Empire.

Clearly overtaxed, the British Royal Navy desperately needed experienced men. But conditions of service were brutal. Sailors often jumped ship and signed on with private American vessels. British officers were ordered to board U.S. ships and "impress," or remove, anyone who might possibly be British. By 1812, U.S. ships had lost about 6,000 sailors, many of them born in the U.S.

The young U.S. protested these developments. Little changed. Then, violence erupted on American soil. Native American peoples resisted the settlers pushing into their lands. The settlers blamed England for stirring up the tribes. In 1811, the great Shawnee leader, Tecumseh, fought William Henry Harrison at Tippecanoe. Many westerners announced that a new war with England had begun. "Attack Canada," they urged the government. "Drive the British off 'American' soil."

New England and Virginia were less enthusiastic. War would interrupt the sea trade on which they depended. More western settlements could mean more states and less power for them. Besides, the United States' untrained militia and tiny navy could not hope to beat Great Britain. Preparing for war meant taxes. People might revolt. Why take such risks when the real problem was not British abuse but western settlers' greed for land?

However, England's aggressive behavior continued. The western "War Hawks" finally prevailed. In 1812, Congress declared war on Great Britain. It began bravely enough, with a series of dramatic naval duels which raised American hopes. The U.S. managed, if somewhat awkwardly, to prevent invasion from Canada. They even scored some victories on that front. By 1814, though, the tide had turned.

The Royal Navy blockaded New England, crippling the region's economy. New England controlled most of the nation's banks. Suddenly, the government couldn't get any more military loans. Having opposed the war from the start, politicians from the area called a convention. It was widely believed that Massachusetts, Rhode Island and Connecticut would secede from the United States.

To make matters worse, the British finally defeated Napoleon in Europe. They now turned their full force on the U.S. Americans repelled one attack from Canada. But on August 24, 1814, 4,000 British soldiers and marines marched into Washington, D.C. The Capitol, the White House and the shipyard burned. President James Madison hid in the hills of Virginia. The Declaration of Independence spent the night in an old barn. Heading for Baltimore, the British only turned back when, after three days of shelling, the "star-spangled banner yet waved" over Fort McHenry.

This setback did not seem to disturb the British. The American government soon found out why. In the fall of 1814, a British armada gathered at Negril Bay in Jamaica. The huge fleet carried 10,000 soldiers, including two crack West Indian regiments and five rifle companies fresh from the French wars. Expecting victory, a full set of officials to rule England's "new" American colonies were along for the ride.

U.S. spies reported that the fleet would soon sail north, seizing the Gulf Coast cities and sweeping up the Mississippi Valley. Control of the river meant command of the West. But where would the British strike first? Some thought Mobile, Alabama; some, New Orleans. In burned-out Washington, Madison's cabinet worried. There was nothing to stop the British now, nothing in their path.

1. It is the fall of 1812. You live in a western settlement at Cleveland, Ohio. Do you support this new war? Why or why not?
2. How might you feel about the war if it was 1814 and you lived in Boston?
3. Now place yourself in New Orleans. It is early fall, 1814. Rumors about the Jamaican fleet and the fall of Washington fill the city. As a wealthy Creole merchant, you know that:
   - The local militia can, at most, call up 2,000 men, including you, none of whom is trained to fight. Even if you were, the city has almost no weapons to arm you.
   - The city holds only 350 U.S. troops. A larger force guards Mobile, Alabama, just a few weeks' march away. But its leader, General Andrew Jackson, thinks the British will strike there first.

- A Royal Navy blockade of Gulf shipping has stuffed the city's warehouses with millions of dollars of goods. The laws of war award this loot to anyone who conquers the city.

Should you throw out the Americans and surrender to the British before they attack? Why or why not?

William C.C. Claiborne. *Library of Congress*

Claiborne's Choice

Though we don't know the exact details, a meeting like the one you are about to hold really did take place in New Orleans in early September, 1814.

Governor Claiborne has summoned his "kitchen cabinet" to a secret meeting. Like most of Claiborne's close advisors, you were born on the "American" East Coast. Ever since moving to New Orleans, you've doubted the loyalty of the French, Spanish and Creole citizens. They never cooperate!

This evening, when ushered into the Governor's library, you find Claiborne pacing his chamber, very upset. He has just received a letter from Jean Lafitte.

According to Lafitte's letter, a British officer came to the smugglers' base on Grande Terre Island a few days ago. He told Lafitte that the Royal Navy would soon chase the "American tyrants" from New Orleans. The British asked Lafitte and his men—all experienced fighters who know the bayous—to help attack the city. In return, they offered him a captain's rank and $30,000. If he refuses, they will destroy Grande Terre.

Lafitte assures the Governor that, though outlawed, he loves the U.S., his adopted country. "I will never let slip any occasion of serving her or of proving that she has never ceased to be dear to me." He offers to help defend New Orleans against the British. He can supply 1,000 men, 70 armed ships and plenty of weapons and gunpowder.

Lafitte asks two things in return: a blanket pardon for himself, his brother and his men, and the Governor's promise to stop harassing them. No matter what anyone says, he is only a smuggler, not a pirate. He hates the British. If the Governor turns him down, he will leave rather than help them.

Governor Claiborne needs your advice. Should he simply ignore the letter? Perhaps it's a lie and the British are nowhere in sight. What if the treacherous Lafitte has already agreed to help the British? Should he destroy Lafitte's camp while he still has the chance? Even if he can trust Lafitte, dare he bargain with a criminal?

Step 1. What you decide to do will depend on whether you believe certain "facts." For instance:

a. The British will soon attack New Orleans.

b. Neither the federal government nor the city's native population will be of much help in the city's defense.

c. The British have asked Jean Lafitte to join the struggle on their side.

d. Jean Lafitte is a criminal.

Discuss these statements with the other citizens in your group. Decide which are true and which are false. (If you can't reach consensus, majority rules.)

Step 2. Based on the facts you've established, how should the Governor respond to Lafitte's letter? Your options include those listed above—ignore it, etc.—and any others you can think of. As a group, decide what to do.

Step 3. Write a brief statement describing your recommendation. Which, if any, of the statements did you decide to believe? Why did your group choose this response to Lafitte's letter?

1. Why were the four facts important to your decision? Which did you believe? Why? How did these beliefs affect your recommendation?

2. In general, how do you think people decide what information to believe? How do people normally determine truth?

3. Like your groups, Governor Claiborne and his advisors had very few hard facts. And they had to act quickly. Compare their decision, which your teacher will describe, with your own. Do you think they acted wisely? Why or why not?

4. Read the newspaper, clipping all articles in which government agencies—law enforcement, prosecutors and courts, legislatures, the military—seem to work with, rely on or ask help from suspected or convicted criminals. Find at least five examples. At the end of the week, pool your clippings with the rest of the class. In how many of these cases do you approve of the government's action? Why? Does it matter whether the alleged criminals have been convicted? Why or why not?

A Specific Act

It's hard to make a good decision without reliable facts. The more important the decision, the more important truthful information becomes. In hindsight, we know a good deal about the "facts" on which the Governor's advisors relied. The first two were quickly tested by events. You will see whether they proved true or false. People debated the third statement for decades. Then the actual letters from the British to Lafitte turned up. Indeed they had tried to buy his help.

Finally, then, was Jean Lafitte a criminal? If so, what kind: an unscrupulous merchant, a smuggler, a gangland overlord? At the time of his decision, Governor Claiborne had already set in motion a process to address this issue. He had asked the federal courts to decide whether Jean Lafitte was a pirate.

Our legal system, which must often make critical decisions, has very specific ways of determining whether information is true. If applying these methods to the question of Lafitte's piracy, we must begin where the law begins and find out exactly what a pirate is. As with all major crimes, the law gives us a careful definition. The meaning has little to do with parrots or peg legs. Under U.S. law, piracy is:

- **Any act of violence, detention or plunder committed for private ends by the crew or passengers of a private vessel against another vessel or the persons or property aboard it; or**
- **Any act of voluntary participation in the operation of a vessel with knowledge that it is a pirate vessel.**

Do either of these things and you're a pirate. . .except, in Lafitte's day, if you're carrying letters of marque.

Marque is a French word which means reprisal or revenge. Nations used letters of marque to increase their sea power. They issued letters to private citizens, giving them permission to take reprisal on enemy ships. Such citizens were called privateers (*private* plus *volunteers*).

In some ways, privateers behaved like pirates. But because their actions were lawful, witnesses' lives could be spared. After winning a battle, they sailed their "prize" to a port in their own country. Usually, a "prize court" there examined the capture. If all seemed in order, the ship, its weapons and cargo went to the privateer captain and crew. Its sailors went, as prisoners of war, to jail.

A letter of marque was not an international license to pillage. Privateers could only attack ships from nations which their governments identified as enemies. Many countries, including the U.S., barred their ports to privateers from other nations. Also, U.S. citizens could not use other nations' letters of marque.

Usually, violating these rules was illegal privateering. Sometimes misusing letters of marque would be piracy. For example, imagine that a captain received letters of marque from Britain to attack Spanish ships. Instead, the captain attacks and captures a French ship. The letters would not protect him and he could be charged with piracy.

Under our laws, people aren't criminals in general. One only becomes a thief or a murderer if one commits a specific theft or murder. To be a pirate, Jean Lafitte must have committed at least one specific act of piracy. He is said to have played a part in each of the events below. Do any of these cases contain the specific act we're looking for?

Case 1. In April, 1801, a pair of vessels from the French colony on Haiti stalked the Gulf of Mexico. One was captained by Renato Beluche, the other by Jean and Pierre Lafitte.

On the 22nd, they spied a Spanish warship, the *Corvette Atriveda*. Cannon fire soon smashed the *Corvette's* lower deck and cut her foresail. One shot alone killed 12 men and hurled 8 more into the sea. After the battle, Beluche tortured the Spanish captain to find the ship's hidden gold and silver.

The victors sailed to the French island of Martinique. After presenting French letters of marque issued against Spain, they sold their spoils. They kept their most important find—the captain's papers showing Spanish trade routes—to themselves.

Case 2. A Cuban official once called Vincent Gambio "the cruelest and the greatest assassin among all the pirates." Gambio worked the Gulf of Mexico. Officially, he used letters of marque from France or Cartagena (one of Spain's former colonies) against Spanish ships.

Around 1810, Gambio moved his home port to the bayous below New Orleans to avoid the British. There, he found a new *bos*, Jean Lafitte. Lafitte gave strict orders. American ships were off limits to vessels from Grande Terre.

Soon afterwards, Gambio set sail. He was looking for Spanish ships, no doubt, but the first he found was American, a merchantman heavy with cargo. The prize proved too tempting. After sacking the vessel, Gambio sent her to the bottom with all hands.

Case 3. On November 17, 1812, the American ship *Spy* spotted the *Jane*, a British merchantman. Quickly realizing her plight, the *Jane* tried to escape. But her load of Honduran logwood and mahogany was too heavy. After a brief battle, she surrendered.

The *Spy's* captain, Renato Beluche, was not a U.S. citizen. However, he did hold American letters of marque. In a New Orleans prize court, he claimed the *Jane* and her cargo as his own.

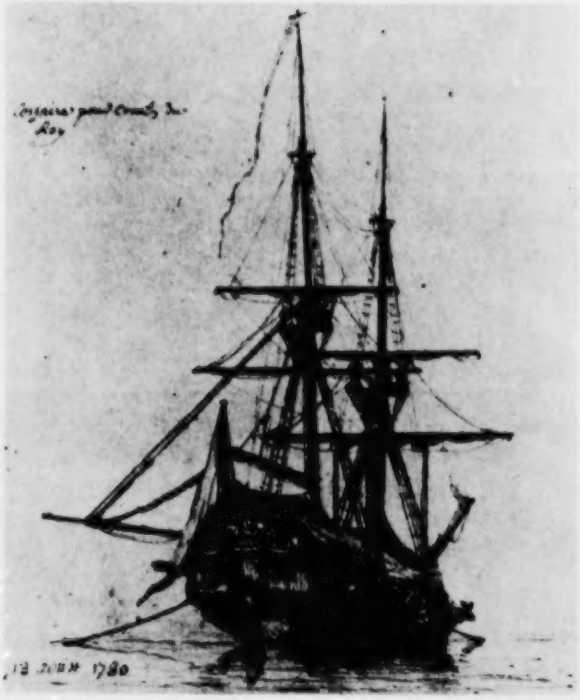
1. Why do you think the legal definition of piracy is so complex? Can you think of a better or simpler definition?
2. Are any of the three cases piracy? In any, does Jean Lafitte commit an act of piracy? Explain your answers.
3. Politicians, entertainers and business leaders are sometimes criticized for "associating with known criminals." Do you think Lafitte was a victim of guilt by association? Is such criticism fair? Explain your answers.

A Specific Charge

Merchant Antonio Arcasos had a bad year in 1813. The Spaniard, who lived in New Orleans, lost two ships. The *Santa* was last sighted in mid-February, about nine miles from Grande Terre. Ten weeks later, the *Luisa Antonia* disappeared off Trinidad. Blaming bad weather, the merchant tried to forget his losses.

Early the next year, Arcasos heard some good news. His ships and their $40,000 cargo had been found. He also heard some bad news. They were found on Grande Terre.

As Spanish-owned ships, the *Santa* and *Luisa Antonia* could be taken with letters of marque from Cartagena. Lafitte's captains carried such letters. But if the ships were legally attacked, where were the crews? Why had goods



Library of Congress

taken with foreign letters of marque been brought into the U.S.? Somewhere, something was wrong.

In April, 1814, Antonio Arcasos called on U.S. officials in New Orleans. The merchant's story raised Governor Claiborne's hopes. At last, here was a firm suspicion that Lafitte and his men had broken U.S. law. No more need to wait for local officials to take action. He immediately demanded a full investigation by the federal grand jury.

A grand jury decides whether there is enough evidence to try a person for a crime. (A trial or "petit" jury decides whether an accused person is innocent or guilty.) In most places, there are two grand juries: one county or local, and one federal. The county grand jury considers state criminal matters; the federal jury considers crimes under U.S. law.

At a grand jury hearing, jurors examine information about a given situation. Today, if they find "probable cause" to believe a specific person has committed a criminal act, they issue a bill of indictment. This is a written statement accusing a suspect of a crime. The function of a federal grand jury was very similar in Claiborne's day.

Grand jurors are chosen from among local citizens by judges and politicians. The jury which would hear Arcasos' story had been chosen by U.S. officials from among the growing "American" community in New Orleans. Like the judges who selected them, the jurors had been born in East Coast cities. They spoke English. They were not likely to sympathize with Lafitte.

Grand jury hearings are secret. From the little we know about what took place, Lafitte and his men did not participate. Instead, a parade of witnesses recounted act after act of Baratarian piracy. It surprised no one when the jurors announced they found probable cause to believe that:

- **Renato Beluche, one of Lafitte's captains, committed acts of violence and plunder against the Spanish vessel *Santa* on February 19, 1813.**
- **Dominique You, another captain, committed acts of violence and plunder against the Spanish vessel *Luisa Antonia* on May 1, 1813.**
- **Jean and Pierre Lafitte did "knowingly and willingly aid, assist, procure, counsel and advise said piracies and robberies."**

All four men had been indicted for piracy. Warrants were issued for their arrest.

1. The Lafittes were not accused of attacking or plundering either of the two Spanish ships. Why, then, were they accused of piracy?
2. If an accusation against Lafitte had been heard by a local rather than a federal grand jury, do you think the Lafittes and their men would have been indicted? Would using a local grand jury have been more just? Why or why not?
3. Why do you think grand jury proceedings are held in private? Should they be kept secret? Why or why not?

As a Matter of Fact

Finding out if an accused person actually committed the act with which he or she is charged requires a trial. Our legal system uses an adversary process. Prosecution lawyers try to prove the person did commit the act. Defense lawyers argue that the person is not guilty. Each side tries to convince an impartial judge or jury that its position is correct.

As weapons in their battle, the prosecution and defense rely on facts or "evidence." Evidence can be physical items —a gun, a sample of blood. It can be information called up from a witness's memory. Attorneys try to weave whatever evidence is presented into a story of innocence or guilt.

Adversary systems have one big risk. What if the judge and jury accept the conclusion of the side which argues the best rather than the correct conclusion? To help prevent this, judge and jury must base their decisions on the facts presented to them in court and *only* on those facts. Further, only certain kinds of facts can be presented.

Quite sensibly, evidence presented in court must address an issue important to the case at hand. One primary issue in Lafitte's case, for example, was whether the attacks on the *Santa* and *Luisa Antonia* were piracy or privateering. Facts which address this question or others equally vital are "material" evidence.

Evidence must also have a reasonable value in answering a question. For instance, a sailor swears that the *Santa* was attacked by French-speakers. Evidence that Lafitte's men speak French is relevant. Evidence that they all own French poodles is not.

People aren't perfect. No two of us will see or describe an event in exactly the same way. We ignore little things

which later turn out to be important. Our memories fail. Even under oath, some people lie. Several legal rules help correct for human frailty. Perjury—lying under oath—is a strictly punished crime. Also, people cannot testify if "they don't know what they're talking about."

First, people must have personal knowledge of matters about which they testify. A sailor cannot swear his attackers spoke French if he did not personally hear them. Nor will this statement be accepted in court if he does not recognize French when he hears it spoken.

Second, witnesses can only give certain opinions. Anyone can speculate about things within a normal person's daily experience. How big was an object? What was its color, distance or speed? Did someone seem worried or afraid or sober? But a person can only step outside this realm if the court rules that he or she has "expert" knowledge about a given subject.

Imagine that papers addressed to Renato Beluche and Dominique You are introduced at Lafitte's trial. They seem to bear the official seal of the government of Cartagena. Anyone who reads Spanish could describe these papers to the court. Only an expert on the laws of nations and the high seas could state an opinion about whether they were genuine, valid letters of marque.

Perhaps the trickiest limit on what people may say is the "hearsay rule." Consider this statement from a New Orleans barmaid: "My brother told me Lafitte's men have orders to attack all Spanish ships. And he should know because he used to work for Lafitte." Does it convince you Lafitte's men attack ships? Should it be admitted in court to prove that Lafitte is a pirate?

Maybe the barmaid is telling the truth. Her brother may have told her about the orders. Her brother may have worked for Lafitte. But was the brother telling the truth? And where did he get his information? The court can only find out if the brother himself appears.

The barmaid's statement reveals information which has been "heard" out of court and is being repeated or "said" in court. If it is used in court to try to prove the truth of the matter asserted, it is called "hearsay." Usually, hearsay information is not considered trustworthy enough to be used as evidence.

As with all rules, there are exceptions to the hearsay rule. Imagine the barmaid's brother appears in court. Lafitte's lawyer might ask him, "Is it true you've told all your friends that Lafitte is a pirate and should be hanged?"

True, the lawyer is asking the brother about a statement made out of court. But he is not trying to prove the statement is true—that Lafitte is a pirate. Instead, he wants to show that the brother is biased against Lafitte, thus discrediting his testimony. Out-of-court statements can be used to prove something other than the truth of their contents.

Another exception to hearsay is the admission against interest. If a defendant or witness says something out of court which goes against his or her legal interest, the person who heard the remark can repeat it in court. If the barmaid's brother actually heard Lafitte tell his men to attack all Spanish ships, he can testify to that effect.

This exception is logical. First, few people knowingly make statements against their own interests in court. Admissions against interest allow the jury to eavesdrop in the hope of catching private attitudes. More important, only admissions made by parties to a case are allowed. Since the person who's been quoted is present, he or she can respond to the statement or refute it.

"I Object!"

Though judges can intervene, the task of questioning evidence usually falls to the attorneys. If a lawyer thinks information presented by the other side violates a rule of evidence, he or she objects. The judge rules on the objection and, if it is valid, excludes the evidence.

Step 1. You are an attorney for Jean Lafitte. Imagine he is being tried for acts of piracy against the two Spanish ships. The prosecution will try to raise the evidence described below. Examine each piece carefully. Should you object to any of this evidence? Why or why not?

(The rules of evidence in state and federal courts are very complex and often differ. For this exercise, use the general rules you learned above.)

1. Testimony from Antonio Arcasos. He will swear that three of his friends have reported seeing the *Santa* and *Luisa Antonia* at dock on Grande Terre.
2. Testimony from a local banker. During a chat last spring, Lafitte told the banker that his men often committed acts of violence "against the aggressions of enemy nations, principally Spain and England."
3. Testimony from a New Orleans matron. She swears that her neighbor sailed to Charleston last year on an American ship and has not returned. At a recent Lafitte auction, she saw jewelry which she is sure belonged to her neighbor.
4. An official document signed by Governor Claiborne on March 15, 1813. It reads:

   > I have received information that upon or near the shores of Lake Barataria, individuals of different nations have armed and equipped several vessels for the avowed purpose of cruising on the high seas and committing depredations and piracies. [To *depredate* is to plunder.]

5. Testimony from Pierre Dubourg, U.S. Customs Collector for the port of New Orleans. He will list all known smuggling incidents in the bayous south of New Orleans for the last two years. Then he will state his belief that there is an extensive smuggling operation in the area headquartered on Grande Terre.

Step 2. Examine each piece of evidence to which you objected. How do you think this evidence would affect a jury trying to decide Lafitte's guilt or innocence? Do you think keeping this evidence from the jury will lead them away from the truth? Explain your answer.

The Battle of New Orleans

By the late fall of 1814, even General Andrew Jackson knew the British were headed for New Orleans. Sick with fever, he sped 125 miles on horseback to reach the city on December 1st. A quick survey confirmed that most of the 2,000 militiamen had never seen combat. Worse, Jackson had only one musket and 15 flints for every *four* soldiers.

While Jackson struggled to fortify the city, the British Royal Navy attacked the coast. In just three hours, the fleet destroyed U.S. gunboats posted as the first line of defense. The Kentucky militia, sent for by Jackson, was still three weeks away! The British were here now! Suddenly, the city's civilian defense committee remembered Jean Lafitte.

When first told the Lafittes might be of help, Jackson called them "hellish banditti." "The Baratarians are now being prosecuted by civil officers of the United States," he told the defense committee. "Many are in prison. I cannot do anything in the matter."

Now it seemed clear that without weapons and men trained to use them, there would be no U.S. officers left to try the Lafittes. Prompted by the defense committee, state lawmakers suspended all charges against the Lafittes and their men. A judge quickly freed those in jail. Others came out of the bayous. All turned their talents and their weapons to the city's defense.

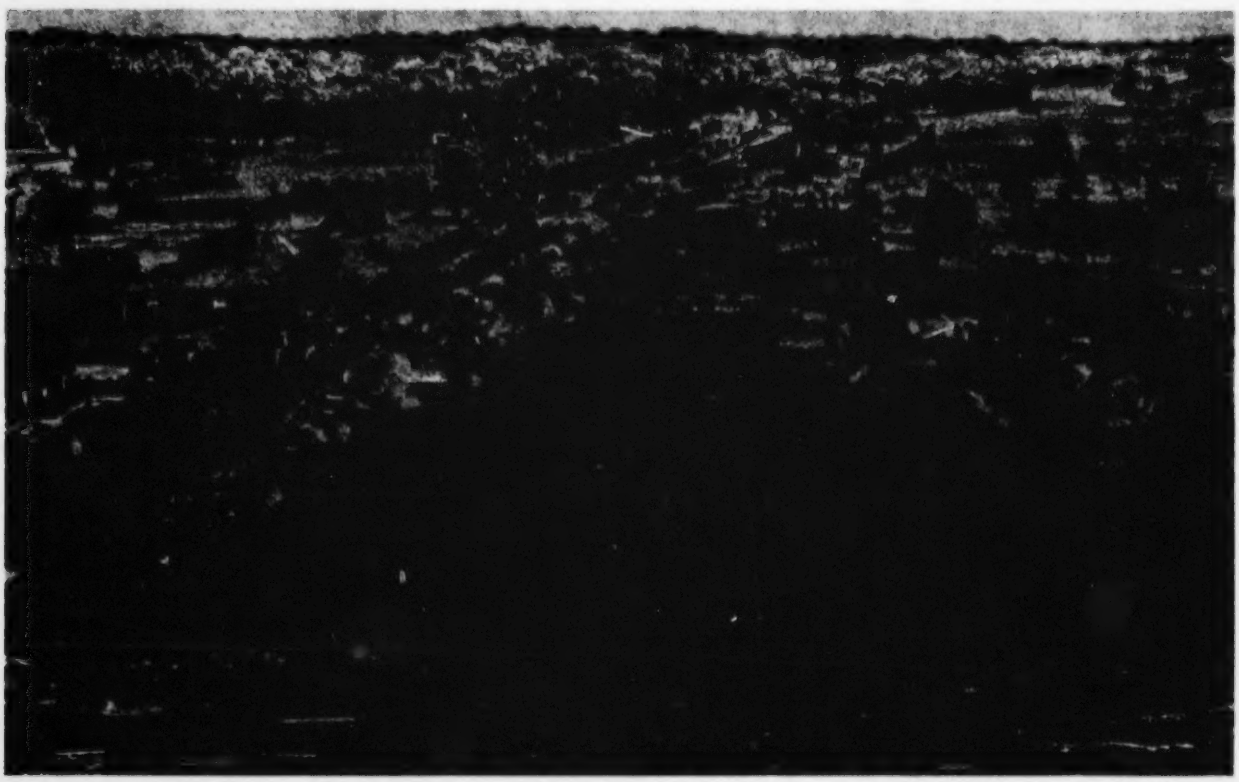
Not a moment too soon. Less than a week later, at about midnight, a young man staggered into Jackson's headquarters. He had just run nine miles from his plantation south of the city. Six thousand British soldiers were camped in his back yard. Jackson saw only one chance and he took it. He attacked at once.

Jackson's troops surprised the British but couldn't push them back. Around 4:00 a.m., the battle ended in a draw. Within hours, on the other side of the world, England and the U.S. signed a peace treaty. Though the soldiers in New Orleans would not know it for weeks, the war was over.

For the next two weeks, tension mounted behind the clearly drawn battle lines. The British unloaded more troops. Jackson's men stalked them through the swamps. Twice, the British tried to force Jackson's lines. Both times, American cannons fought them off. Though British losses were heavy, their supply of men seemed endless. Could Jackson hold them back forever?

England's generals were very confident. Surely they could outsmart these colonials. What if they quietly sneaked enough soldiers across the river one night to capture an American ship stationed there? At dawn, they could turn its guns on the U.S. batteries and knock them out. Then their troops could easily storm Jackson's trenches and overpower his tiny army. New Orleans would be British by nightfall.

The daring plan accounted for every detail but one: Mississippi mud. The bayou's ooze slowed the British down. The sun rose before they took the American ship. As the morning mist lifted, it revealed thousands of British soldiers,



U.S. cannons, *left*, in action at the Battle of New Orleans. *Library of Congress*

completely unprotected, preparing to attack. They could not retreat. So they charged.

At two that afternoon, Jackson's cannons finally stopped. An eerie silence blanketed the battlefield where 1,971 British soldiers lay dead. Six Americans had been killed, seven others wounded.

Two weeks later, the remnants of the British forces well back to sea, Jackson assembled his troops. Before they left the field, the General's aide read them this statement:

> Captains Dominique [You] and [Renato] Beluche, lately commanding privateers at Barataria, with part of their former crew were stationed at [U.S. Cannon Batteries] Nos. 3 and 4. The General cannot avoid giving his warm approbation of the manner in which these gentlemen have uniformly conducted themselves while under his command, and of the gallantry with which they have redeemed the pledge they gave at the opening of the campaign to defend the country.
>
> The brothers Lafitte have exhibited the same courage and fidelity. The General promises that the government shall be duly appraised of their conduct.

Jackson kept his word. On February 6, 1815, President James Monroe granted a full pardon to the Lafittes and all their men. The government would ignore any crimes the Baratarians might have committed. All legal proceedings against them were dropped.

1. The War of 1812 had ended when the Battle of New Orleans was fought. Yet, it is one of the most celebrated battles in U.S. history. Why do you think Americans remember this battle?
2. Imagine again that you're one of Claiborne's advisors. It is February, 1815. Would you support pardoning Lafitte and his men? Why or why not? How would you feel if you were Antonio Arcasos?
3. Do you think the Lafittes, by accepting the pardon, admitted their guilt? If they were innocent, why not go to trial?

Pirate or Patriot?

Grande Terre fell apart after the war. Lafitte moved his "privateers" to an island off Galveston, Texas. New Orleans was relieved. It's not that people were ungrateful. But, as the city became more "American," Lafitte no longer seemed to fit in. He was losing his charm.

For the next few years, Lafitte supplied arms to Mexican rebels, while spying on them for the Spanish. His activities continued to arouse gossip and suspicion. In 1821, under the watchful eye of the U.S. Navy, Lafitte burned his Texas camp to the ground and sailed off into the sunset.

Rumors floated back that he had died on the Yucatan. Over the years, a dozen fanciful novels idealized his romantic life as the last of the Gulf Coast pirates. When Hollywood turned his life into a movie, dashing Yul Brenner played the legendary Jean Lafitte.

In 1958, more than a century after he disappeared, a new book challenged these legends. According to *The Journal of Jean Laffite* (sic), he did not die in the Yucatan. After leaving Galveston, he disguised himself and made a new life in the U.S. In the 1840s, now an aging merchant, Jean Lafitte recorded memories of his former life. He asked his heirs not to publish this journal for 107 years.

"I had always as my motto," Lafitte says in his book, "War on pirates, whoever they may be." He claims that he and his men always sailed under letters of marque.

Some historians agree with this claim. Even during the Grand Jury hearing, few people believed the piracy charges would stand up in court. Just producing their letters of marque would have dropped the charges to smuggling or, at worst, illegal privateering.

Whether or not the Grand Jury had hard evidence, other historians suggest that Jean Lafitte and his men probably were pirates—at least every now and then. Why else would hundreds of smugglers and crooks obey Lafitte's every command? How else could he amass so much wealth? Someone in the Gulf of Mexico was sinking ships and murdering sailors. Where there's smoke, they argue, there's fire.

Whatever history's verdict, in the eyes of the law, Jean Lafitte was not a pirate. The charges against him were never proved. Do you think Lafitte was innocent? Or did an accident of history let him escape justice?

1. What evidence do historians rely on? What standards of truth do they use?
2. Which way of establishing truth seems more accurate—law's or history's? Why?
3. Was Jean Lafitte a pirate or a patriot? In a one-page essay, state your answer and at least two arguments which support it.

Steam ships in New Orleans harbor, 1839. *Library of Congress*

Martial law is imposed in Kansas City, Missouri, in 1863. *Library of Congress*

Rights and Wrong

The coach's whistle shrieked across the gym. A basketball thudded to rest at the foot of the bleachers. "Longworth!" yelled Coach Haynes. "Where do you think you're going?"

Almost to the locker room door, Longworth froze. I knew this would happen, she thought. I just knew it.

Longworth steeled herself, half turning toward the coach. "I told you, I have to see somebody."

"What?" Haynes barked back. "I didn't hear you."

"I have to see somebody at 4:30," repeated the player clearly and carefully. Then she whined, "Come on, I already told you."

"You told me. Yeah, and Rojas told me she had a sore foot, and Baker told me she wanted to go to the movies this afternoon." The other players, still lined up on the forecourt, snickered. "And I told them," continued the coach, "just what I told you. You join this team, you make a commitment. You make a commitment, you keep it." Haynes began to pace. "You join this team, you promise to make this team the most important thing in your life. What does that mean, Longworth?"

Longworth closed her eyes. Oh, I don't have time for this, she thought.

"What is it in your personal life, Longworth, that could possibly be so important that you're willing to risk the team's success?"

"Could we talk about it later?" Longworth realized she should have told the coach the whole story before practice. She hadn't. Haynes was a good coach, but not the sort of person you told your troubles to.

"If it's that important maybe you should share it with your teammates. They're the ones you're letting down."

Sure, she thought, I'm just going to tell everybody my mother thinks I'm maladjusted, so she's sending me to a psychologist. Maybe I'll have them announce it over the P.A. I'm a loony. "Yeah, right," she muttered.

"You said what?"

"I said it's none of your business."

"Fine," said the coach after a moment. "If that's the way you want it. And, since you're headed for the lockers anyway, clean yours out." With another whistle blast, Haynes turned back to the group. "Alright! Get that ball in motion! Come on, I want to see you move!"

Longworth bit her lip and turned away. Another perfect day, she thought, slamming her open palm against the locker room door.

1. What does Longworth want? Do you think the "request" is reasonable? Why or why not?
2. Sometimes people have problems because their needs interfere with those of others. What does the coach want? What do the other players want? Is Longworth interfering with their needs? If so, how?
3. This story *seems* to be about a conflict between individuals—a player and a coach. It's also something more. An individual—Longworth—is in conflict with the "common good." What does this phrase mean? What is the common good in the story?
4. The coach's actions were probably meant to promote the common good. How might what happened harm rather than help the team?
5. If you were Longworth, how would you have handled the situation? How would you have handled it if you were Coach Haynes?

The Balance of Law

Governments and laws promote many kinds of common good. They try to encourage practices which will benefit the public. They try to protect society from those who want to cheat or injure others. They try to prevent disruptions which might make it hard for others to lead productive, meaningful or honorable lives.

But our government has another purpose which is just as important. We believe law must also protect individuals from society. Groups sometimes reject men and women who are different. In times of crisis, people with uncommon views or lifestyles can lose their liberty, property, even their lives. Women and people from ethnic minorities can be subject to more subtle, long-term mistreatment.

People's needs and goals do not always mesh with the common good. Because of this, the law's two aims—protecting society as a whole and protecting individual people—may conflict. We struggle to find the correct balance between these goals. The U.S. Constitution is said to tip the scales just slightly in the individual's favor.

The Constitution protects individuals by defining our rights. We can choose and practice a religion. We can express ourselves freely. We can keep and bear arms. Strict rules insure us a fair trial if accused of crime. No matter who we are, the law is supposed to protect us all in an equal manner. Perhaps most important, the government itself must obey the law. If the government at any level is to interfere in our daily lives, there must be a good reason.

Even with these special protections, the individual does not always come out on top. At times in our history, Americans have lost property and even their lives through government actions. At times, individuals have taken advantage of their freedom, threatening the safety and welfare of others. Whenever we give too much emphasis to one side or the other, dangers arise.

1. What individual rights does the Constitution guarantee?
2. In the story above, do you think Longworth had the "right" to keep her personal affairs private? To decide for herself whether her appointment was more important than team practice?
3. Do you think the men who added the Bill of Rights to the Constitution chose the correct rights? Did they include too many? Were important ones left out? Explain your answers.

Milligan, at the time of his arraignment in Indianapolis. Engraved by A.H. Ritchie. *Courtesy of the Indiana Historical Society*

Milligan's Conscience

Lambdin P. Milligan was a fighter. He battled his way to health from a childhood spent in a sick bed. On his own, he learned to read and write. Like Abraham Lincoln, he taught himself the law.

When he passed both his teacher and bar exams by age 21, the people of Huntington, Indiana pointed to Milligan with pride. They admired his peaceful manner. They respected his strong, strict feelings about right and wrong. In Milligan's eyes, it was right to practice what one preached, to stand up for one's beliefs, to protect one's ideals. What was wrong? The War Between the States.

Milligan did not agree with Northerners who felt slavery was so awful it must be stopped at any cost. To Milligan, slavery was a much smaller problem than Northern tyranny. No state had the right to tell another what to do. Nor could a majority of states impose their will about internal economic issues like slavery. Northern threats had forced the South from the Union, turning brother against brother.

Milligan saw only one way to undo the damage. Stop the bloodshed at once and woo the South back. But the North's current leaders, Abraham Lincoln and his administration, disagreed. Now that the South had stood up for its right to leave the Union, they seemed intent on bringing it to its

knees. Milligan thought Lincoln was far more concerned with the slaves than the Union. In fact, he suspected Lincoln of using the war as an excuse to destroy the Constitution and deny people its protections.

One of these protections was *habeas corpus*, a Latin phrase which means "you have the body." This gives the courts power to release people from jail. If a judge believes someone has been arrested for invalid reasons or is being held without charges or a proper trial, he or she may issue a writ of *habeas corpus*. The prisoner must then be released.

Habeas corpus is one key element in the protection of our liberties. Because of this, Congress can only suspend the writ when public safety is threatened by rebellion or invasion. Early in the war, President Lincoln decided these constitutional conditions had been met. He suspended *habeas corpus*. Congress approved his action.

Lincoln also declared martial law in many parts of the country. Under martial law, those who spoke out against the government, published anti-war tracts, helped men avoid the draft or were accused of treason would be arrested by soldiers rather than police. Their cases would be heard not by juries but by army officers in military courts unhampered by civilian rules about evidence and proof.

As a result of these actions, federal records list more than 13,000 Northerners who suffered arrest and jail for acting on their beliefs that the war was wrong. Lincoln knew that, during peacetime, both actions would be unconstitutional. But the nation was now at war. Only strong measures could see the Union through this crisis. Strong medicine can be good for a sick man, said Lincoln, even though it hurts a healthy one.

The President was especially concerned about the many Northerners who supported the South. At the least, these people could destroy the public's confidence. At worst, they might spy for the South, sabotage arms shipments or even start an open rebellion.

As an example, Lincoln pointed out that several Southern generals, all known traitors, were on Northern soil when the war broke out. If they had been seized and held without benefit of *habeas corpus*, the war might already be won. "I think the time not unlikely to come," predicted the President, "when I shall be blamed for having made too few arrests rather than too many."

Many people believed Lincoln; Milligan did not. In his eyes, the denial of basic rights was just a political ploy. With those who opposed him in jail, Lincoln could take over. The United States was in grave danger, but from Lincoln's Republican Party, not the war. Fearing his country would soon be a dictatorship, Milligan decided to stop Lincoln, whatever the cost.

1. What is a writ of *habeas corpus?* Why did the men who wrote the Constitution consider it so important?
2. How might your life be changed if you lived under martial law?
3. What did President Lincoln see as the common good? How did he try to protect the general welfare? How did Milligan's view of the common good differ from Lincoln's?
4. Were any of Lambdin P. Milligan's rights really threatened? Do you think his fears for his country were justified? Why or why not?

Milligan's Plot

During the war, a secret organization called the "Sons of Liberty" flourished in the North. Its purpose was to "promote the success of the Democratic Party." Mostly, its 500,000 members campaigned for Democrats in local and state elections. They wanted to win control of Congress and force a peace settlement with the South. But a radical wing of the Sons of Liberty wanted to do more.

To this group, opposing Lincoln's stand against the South meant fighting fire with fire. These men began smuggling guns to the Confederates. They reported on Union troop movements. They blew up railroads and bushwhacked Federal soldiers. By the spring of 1864, Lambdin Milligan had joined them.

The 1864 Democratic National Convention was to be held in Chicago. Throughout the midwest, radicals plotted. When the delegates met to choose their candidate to oppose Lincoln for president, the radicals planned to start a riot. As federal troops rushed to Chicago, other radicals would seize the unguarded arsenals and military prisons filled with captured Southern troops.

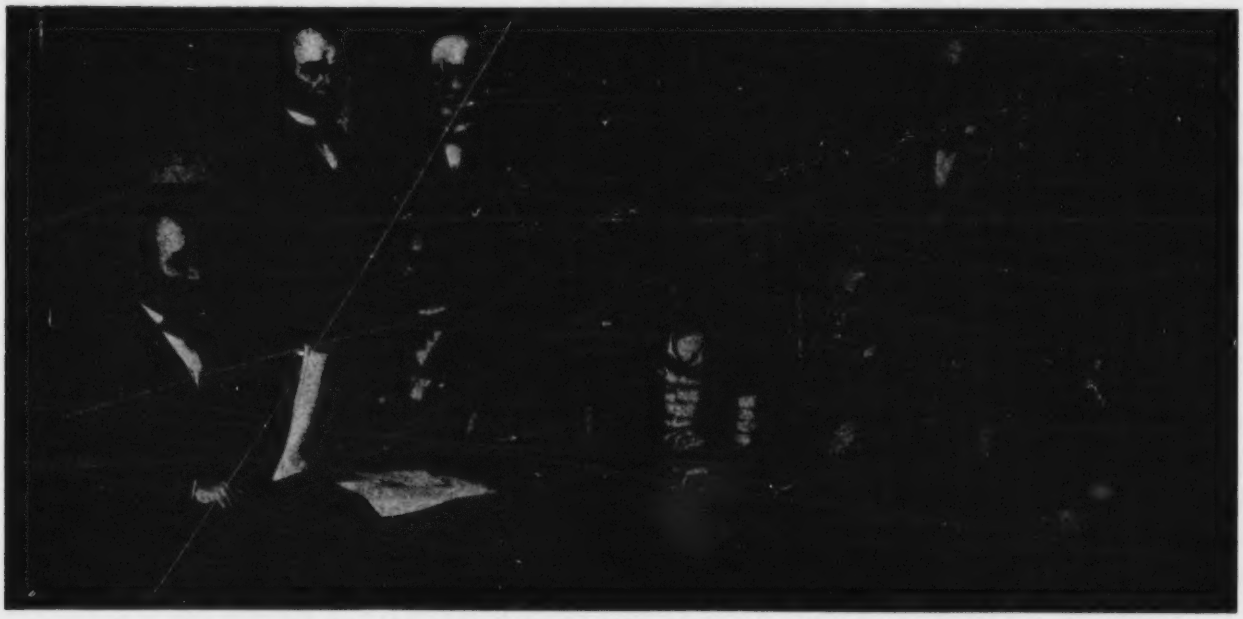
The Sons would then sweep into Kentucky and Missouri with their army of freed Southern prisoners-of-war. These pro-South border states should fall without much trouble. When they did, the radicals would use them as home base. They'd re-invade Ohio, Indiana and Illinois, form their own Confederacy and secede from the Union.

A plot of this size involved hundreds of people. Even a secret organization couldn't keep it under wraps for long. Federal spies betrayed the group's plans. On October 5, 1864, the U.S. Army raided the radicals' homes and offices. Several leaders were arrested, among them Lambdin P. Milligan.

1. What did the Sons of Liberty stand for? What were the goals of its radical wing? What political slogans might each have used?
2. Why was Milligan arrested?
3. Consider Milligan's fears about the direction his country was heading. Consider Lincoln's suspension of many civil rights. Do you think Milligan's *action* was justified? Why or why not?

Milligan's Trial

Our civilian system of criminal justice, then and now, includes many protections against unfounded arrests and unfair trials. In many cases, a grand jury would first consider the charges against Milligan. Was there "probable cause" to believe Milligan took part in a plot?



President Lincoln and his Cabinet. *National Portrait Gallery, Smithsonian Institution, Washington, D.C.*

If so, both Milligan and the government would present their evidence at trial to a jury of twelve citizens. Milligan could only be convicted and punished if all the jurors were convinced of his guilt "beyond a reasonable doubt." If legal errors were made, Milligan and his lawyer could appeal the decision to a higher court.

Since 1863, however, Indiana had been ruled by martial, not civilian, law. Milligan's case would be heard by a military commission of twelve army officers. They would determine whether Milligan was guilty. If they decided against him, they and they alone would set his punishment. Moreover, these "judges" could not be considered completely impartial. They were convened by Major General Alvin P. Hovey, the man who had ordered Milligan's arrest in the first place.

Milligan and those arrested with him faced several charges. They had incited rebellion. They had conspired against the government. They had given aid and comfort to the enemy. The Army claimed that Milligan, in particular, had planned the attack on Union troops by freed POWs.

Milligan refused to respond to these serious charges. Instead, he presented reasons why the Army could not legally try his case. First, he said, the Army had no power over civilians. Since he was neither a Union nor a Confederate soldier, the Army should not even have arrested him. They certainly could not judge him.

Second, as Milligan understood the Constitution, the government could only declare martial law or suspend *habeas corpus* inside a war zone. No battles were then being fought on Indiana soil. No state of war or rebellion existed where Milligan lived, was arrested and was being tried.

Finally, the civilian courts in Indiana had not closed. As long as they remained open, argued Milligan, the Constitution guaranteed everyone in the area their protection. Milligan would only answer his accusers in front of a jury in a civilian court.

The military commission paid little heed. In their eyes, martial law not only allowed them to try the case; it required them to do so. All the Sons of Liberty were found guilty as charged. Three ringleaders chosen as examples, among them Milligan, were sentenced to death. District commanders rapidly confirmed this decision and sent it to the President. As soon as Lincoln signed the orders, Milligan and his two comrades would hang.

1. Was Milligan treated fairly by the Army? Why or why not?
2. Read the Constitution's Fifth and Sixth Amendments. Which of Milligan's normal constitutional rights may have been violated during his arrest? At his trial? Explain your answer.

A Letter to Lincoln

In spite of their differences, Abraham Lincoln and Lambdin P. Milligan held similar ideas about individual rights. Both men believed in personal freedom. "Each individual," Lincoln said, "is entitled to do as he pleases with himself and with the fruit of his labours, so far as it in no wise interferes with any other man's rights."

The two men also shared a commitment to the Bill of Rights. "I am exceedingly anxious," Lincoln announced right after his election, "that this Union, this Constitution and the liberties of the people shall be perpetuated."

Like Milligan, Lincoln feared for the survival of the ideals and freedoms expressed in the Bill of Rights. He once wrote:

> On the question of liberty, as a principle, we are not what we have been. When we were the political slaves of King

George and wanted to be free, we called the maxim that "all men are created equal" a self-evident truth. But now that we have grown fat and have lost all dread of being slaves ourselves, we have become so greedy to be masters that we call the same maxim a "self-evident lie." The fourth of July has not quite dwindled away. It is still a great day—for burning firecrackers!!!

It is January, 1865. President Lincoln faces a difficult choice. As the Army's commander in chief, he must either approve the military commission's ruling and hang Milligan, or overturn it and set him free. What should he do?

When you've picked your side on this issue, make a list of three or more reasons why you think Milligan's sentence should (or should not) be overturned. Arrange your list in order of importance. Then, write a clear statement of each reason. Use complete sentences.

Using your list as an outline, write a letter to Abraham Lincoln. Tell him which choice he should make and why. Explain your reasons as clearly as you can. Give the President any background or facts he might need to make this important decision. Remember, both the Union's safety and Milligan's life are in Lincoln's hands.

1. Which of the letters you heard was most convincing? Why?
2. What kinds of letters do you think elected officials receive from the public? Why is this kind of communication important?
3. Contact a state or local representative's office and invite a staff member to your classroom. Find out what kinds of mail the representative receives. How are problems and complaints handled? How can citizens most effectively communicate with officials?
4. What issues concern students in your community? Identify an issue on which students in your class hold at least two different positions. As a class project, write a letter expressing each view to the mayor or a city council member. Explain your opinions. Ask the official to take appropriate action.

Ex Parte Milligan

Abraham Lincoln saw no reason to hang any of the convicted Sons of Liberty. He just wanted to keep them in jail and out of his way until the war was over. He sent Milligan's case back to the Army, pointing out mistakes in the paperwork. Correcting these would take the Army a couple of months. By then, Lincoln hoped, the war would be won and Milligan could be released.

Unfortunately for Milligan, Lincoln delayed too long. The revised death sentence was returned for White House approval in late April. The Union had won the war. But the nation had lost its leader. Just a few days before, on April 14th, Abraham Lincoln fell to an assassin's bullet.

The late President had urged the nation to heal its wounds "with malice toward none; with charity for all." The new leader, Andrew Johnson, disagreed. In Johnson's eyes, death was the only just punishment for treason. He ordered the Army to execute Lambdin Milligan.

As this news broke, the Northwest exploded. Many people thought Milligan was a patriot, not a traitor. Even those who approved of his imprisonment were outraged at the thought of killing a man without a fair trial. No civilian tried under martial law outside a war zone had been executed during the war. Why take such a vengeful action now?

Angry letters poured into the nation's newspapers. Pleas and protests swamped government offices. Famous people tried to sway the President. Johnson held firm. As the date of the hanging drew near, Milligan played his last card. He petitioned the U.S. Supreme Court.

The Supreme Court does not review decisions about facts made by lower courts. It would not, for instance, rule on the Army's judgment that Milligan was guilty of treason. Instead, the High Court decides whether other courts have obeyed the law. Was Milligan tried and convicted in a legal manner?

In his petition to the Court, Milligan claimed that his imprisonment and trial were illegal. He asked the Court to issue a writ of *habeas corpus*, ordering the military either to release him or to turn him over to the civilian courts for a proper trial.

Before considering this request, the Supreme Court would have to decide a very important issue. Could the government lawfully suspend *habeas corpus* and declare martial law outside a war zone?

As a practical measure, the Court had avoided making this decision during the crisis of war. But, in spite of the Justices' hopes, peace had not dispelled the need for a ruling. Though the war was over, Lincoln's assassins were tried and executed under martial law. Worse, Congress was now trying to impose military rule on the entire South.

Would the Supreme Court move to limit the military's power? Worried, the War Department announced that the Court had no power to review the case. It ordered the Army to ignore writs from any civilian court, even the highest, and execute the prisoners as scheduled. But at the last minute, reason prevailed. Less than 24 hours before the hanging, fearing the effects of a showdown, Johnson changed Milligan's sentence to life in prison. The Supreme Court now had time to make a decision about Milligan's case.

Nine months later, in March of 1866, the Court heard arguments for *Ex Parte Milligan*. Milligan's lawyers argued that his arrest, imprisonment and trial were unconstitutional. Only Congress, not the President, can suspend the right to *habeas corpus*. Neither Congress nor the President can impose military trials on civilians.

"We do not desire to exalt the martial above the civil law," answered the government's lawyers. But "when the nation is threatened, when the bayonet is called in as final arbiter . . . we ask that martial law may prevail so that the civil law may again live."

"A Law for Rulers and People"

On April 3, 1866, the Court rendered its opinion. Yes, a writ of *habeas corpus* should be issued on behalf of Lambdin P. Milligan. His imprisonment and his trial were illegal.

First, the Court said, in spite of the Army's objections it did have power to review the judgment of a military court when no law justifies a military trial.

Second, under the Constitution, reasoned the Court, Congress alone has power to suspend *habeas corpus*. It may only do so when, "in cases of rebellion or invasion, the public safety may require it." Yes, Congress had passed a law in 1863 giving the President power to suspend *habeas corpus*. But Congress cannot g. e the President power denied by the Constitution.

Finally, neither Congress nor the President can suspend citizens' rights every time there's a national crisis. "Such a doctrine leads directly to anarchy or despotism." Martial law can only apply in war zones, never in areas where civilian courts are functioning.

"The Constitution of the United States," said Justice David Davis, writing for the majority, "is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

Many people applauded this opinion. Others accused the Court of supporting treason. On April 10, 1866, after eighteen months in jail, Milligan went free. Later, a federal grand jury indicted him for treason. The case was quietly dropped before it came to trial.

Not content with his moral victory, Milligan sued the men who had tried to hang him. The officers, he felt, were personally responsible for his arrest and trial. He wanted them to pay him for the trouble they caused. Five years later, a court decided the case in Milligan's favor. It awarded him damages of exactly $5.

1. Consider Milligan's story from start to finish. In what ways did the legal system work to protect Milligan's rights?
2. How did the legal system work to protect the common good?
3. In *Ex Parte Milligan*, a person's individual rights conflicted with society's need for protection. Do you think our legal system resolved this conflict fairly? Why or why not?
4. When asked about the fairness of his martial law policy, Abraham Lincoln said:

   > By general law, life and limb must be protected. Often a limb must be amputated to save a life. But a life is never wisely given to save a limb.

   What did Lincoln mean by this statement? Would Justice Davis, one of Lincoln's close friends, have agreed with it? Why or why not?

Justice David Davis. *Library of Congress*

Honorable Opposition

The delicate balance between individual rights and the common good is dynamic. It shifts and changes. Milligan's case is only one of the many which have caused such shifts. The method Milligan chose to express his dislike of Lincoln's action is only one of many available means.

Today, these government policies are sometimes cited as violations of individual rights.

a. **Charging a tax on a person's income; prosecuting and punishing people who refuse to pay this tax.**

b. **Allowing, with some restrictions, pregnant women to have abortions.**

c. **Registering male teenagers so they can more easily be drafted into the armed forces; prosecuting and punishing only those who speak out against registration rather than all those who avoid it.**

d. **Allowing, with some restrictions, the construction and operation of plants which produce nuclear energy.**

How is each of these policies intended to promote the common good? What groups does each protect or benefit? On the other hand, whose rights does each policy restrict?

1. As a class, brainstorm ways in which a person might express opposition to and change these policies. How are Americans currently working to make such changes? What other methods could they try? On the blackboard, make a master list of all the ways your class can imagine.
2. Examine the list on the board. Which methods are lawful in the U.S.? Which, if any, do you think a person *should* use to oppose government policy? Why?
3. Why do you think people sometimes resort to violence in an effort to change government policy?
4. Do you think there are circumstances under which one is justified in resorting to violence or a criminal act to oppose something the government does? Explain your answer.

Daily Bread

1. Have you ever earned any money? If so, how?
2. Describe the rules you had to follow to earn this money. Did you have to work at a certain time? For a certain number of hours? Did you have to dress or behave in a certain way? How much work did you have to do? How well did it have to be done? Who enforced the rules? How were you punished if you broke them?
3. How did you use the money you earned? What were the benefits of working?
4. What did you have to give up in order to earn the money? What were the disadvantages of working?
5. In general, why do you think people your age work?

Idle Hands

What year were you born? Change the 1900 to 1800. If you were born in that year and if your parents didn't have much money, your answers to the questions above would be very different. Chances are good that, by the time you reached your teens, you'd be regularly and gainfully employed.

You might be working for a number of reasons, just as young people are today. However, earning spending money would not be one of them. You would rarely see a penny of the money you earned. On pay day, the boss would hand your wages—along with those of your brothers, sisters and mother—to your father.

In 1800, Americans followed a simple rule for creating useful, hard-working adults. As soon as children were physically able, they were put to work. By helping around the house, farm or shop, children learned to be responsible. Work taught them discipline. It prepared them for their futures. In fact, if youngsters didn't work, they might get into awful trouble. "Idle hands are the Devil's tool."

This rule was very practical. Without the children's unpaid labor, a farm or store might not turn a profit and support the family. Parents had to feed, clothe and shelter their offspring. Shouldn't children help their parents in return?

As the century progressed, the Industrial Revolution changed the ways in which Americans lived and worked. Rural Americans and people from many other nations moved to U.S. cities. These people could no longer squeeze a living from their own farms and shops. Instead, they worked for wages in businesses owned by other people.

The new city-dwellers held on to the beliefs and family practices with which they were raised. Children continued to help parents with their work. If mother and father sorted rags for a living, their children helped out. If they worked in a large cotton mill, the factory also employed their children.

Factory owners and managers encouraged this practice. In the first place, running a machine took far less skill and knowledge than making something by hand. Children could easily be taught the simple, repetitive movements needed to tend a spinning jenny. Plus, they were thought less likely than adults to rebel at the physical stress and boredom.

Of course, hiring children was cheaper than hiring grown-ups. No one expected an 8-year-old to earn as much as an adult. For instance, in 1829, Samuel Slater hired a family to work in his spinning mill. He paid them these weekly wages:

Abel Dudley	$4.26
Mary (his older daughter)	$1.33
Caroline (his younger daughter)	$0.67

(Each daughter could be excused for two months during the year to go to school. However, a younger brother, Amos, had to work for 67¢ a week while each girl was gone.)

By today's standards, the cost of living was low—15¢ for a dozen eggs, 10¢ for a pound of bacon. However, wages were even lower. Caroline made about a penny an hour. She'd have to work a day and a third for a carton of eggs. At the minimum wage, a U.S. worker today can earn a dozen eggs in 20 minutes.

Many adults earned little more than enough to buy fuel and pay their $2 or $3 rent each week. Factory families needed the extra income children earned for food and clothing. Often, employers claimed they were doing their workers a favor by hiring whole families.

By mid-century, children worked in almost every American industry. What was it like? Take a careful look at the photographs below. Read the texts. They tell some, but not all, of the story.

1. What was the Industrial Revolution? When did it take place?
2. How did employing children benefit factory owners? Working families? The country as a whole?
3. Why did 19th-century factory owners think children made good workers? Do you agree with these beliefs? Are these ideas still with us?

The Fruits of Their Labor

The textile workers, *top of next page*, are on their way to the Ayer Mill in Lawrence, Massachusetts. There, they run machines which spin thread and weave cloth. One boy carries a lunch basket. A young mill worker once described taking lunch to the factory. "I can either put it on the table where I keep my work and where it becomes squashed. Or I can put it in a box under my bench and give the rats first choice."

In 1885, a weaver explained mill discipline to the *New York Times*. "If a girl is caught looking out of a window, her loom is stopped. She is sent to the boss to explain. Very often, she is docked for it. [To be *docked* is to receive less pay.]

Lewis W. Hine photo, circa 1911. *Library of Congress*

They are not allowed to talk to one another during working hours or at noon time, under penalty of being discharged. They are not allowed to eat dinner together."

Inside a mill, Sadie Pfeifer, *right*, is making thread at a spinning machine. In November, 1908, when this photo was taken, Sadie had been working for six months.

Some mills made clothing as well as thread and cloth. A teenager who sewed union suits (underwear) in a knitting factory told of her work. "After I finish a dozen union suits, I tie them up and carry them to the bin. The bin is usually full and as I throw my dozen up on the top it very often comes down on me. Of course I fall."

"After a monotonous afternoon," she continued, "it is almost time to go home. We have three minutes to put our coats on. Then we wait in our respective aisles. All eyes are on the boss, waiting for the signal. Then we rush out. This racetrack scene is part of the working day."

Clothing was also made in "sweatshops." The boy, *below*, is working on men's coats. His job is to find and pull out

Jacob Riis photo, circa 1889. *Library of Congress*

the basting threads after the coats have been sewn. He is 12 years old.

Other sweatshop jobs, such as cutting the cloth linings for fur coats, took great skill. One slip and the cloth could be ruined. In 1895, a 10-year-old boy with this kind of job worked 69 hours a week. He earned $4.50, more than many adults.

Both in and out of sweatshops, many people worked "by the piece." They were paid according to how many garments they finished, no matter how long the work took them. Whole families, like 8-year-old Mary's in Newark, New Jersey, often did piece work in their own homes. Mary told an investigator that her family had tried hemming men's trousers, making powder puffs, stringing tags and bead work. Now they sewed doll clothes.

Her mother stitched all the garments on a machine. Then the four children clipped threads, cut the trimming, turned the clothing right side out and packed it in boxes. "Mary would not mind it so much if she could do all the four different processes that the children do," said the writer. "But Mother finds it faster if each child does just one thing. Also, the hours on this have to run extra long, to make up for the low pay."

Lewis W. Hine photo, Lancaster Cotton Mill. *Library of Congress*

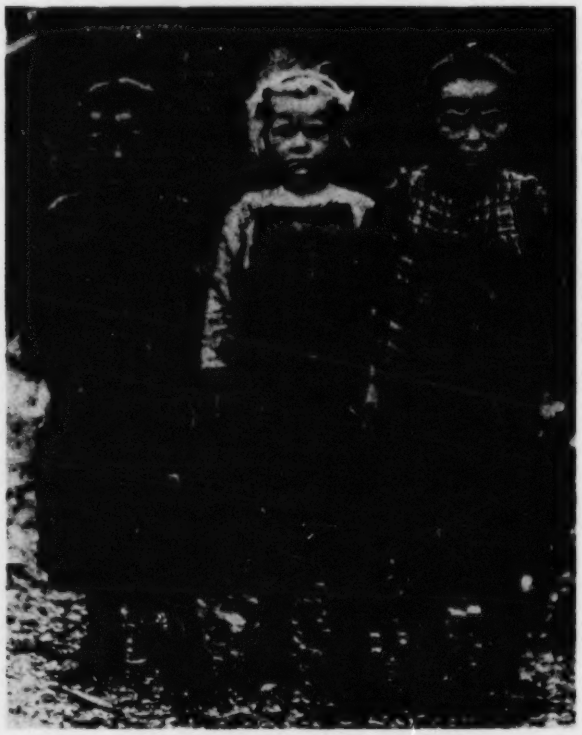
Most industries used children. Ohio potteries which made glassware, tiles and china *depended* on them. "The molds are sometimes built so near the ground," said the government in 1911, "that only a small child [can] crouch beneath their handles."

Potteries ran round the clock. Since they worked on all shifts and the work was physically hard, young potters often suffered exhaustion. They also faced danger from exposure to the intense heat, dust, harmful fumes and lead poisoning.

Coal mine work was also dangerous. Children began there at age 8 or younger. In 1900, they earned about 25¢ for working a 12-hour day. Most worked above ground, coupling cars

or tending switches and doors. Some worked in the shafts themselves, loading cars or digging coal. In 1917, federal inspectors reported that, during their brief stay in West Virginia, "a boy was seriously crippled in one mine. At another, a colored trapper boy was run over by a car. The boy did not live long."

Even "safe" places could be trouble for small children. In a Wyoming bakery, one girl fed dough into a roller. She worked between six and ten hours a day. She earned 10¢ a day, plus all the cookies and cake frosting she could eat. In 1921, at age 9, the girl moved her hand too near the roller. Her hand was crushed. Child workers were two to three times more likely than adults to be killed or injured on the job.



Lewis W. Hine photo, circa 1908. *Library of Congress*

Josie and Bertha, *above*, are 6 years old; Sophia is 10. They are oyster shuckers. Their job is to crack open shellfish and remove the meat. After this, the meat is processed and preserved in cans.

Several hundred children under 14 worked in Gulf Coast canneries in the early 1920s. "Since the work depends on the catch," said an investigator, "it begins any time between 3 and 7 o'clock in the morning and lasts a few hours, a whole day or sometimes on into the evening." Cuts from the sharp oyster shells and work knives were common, as were severe colds. Acids and poisons in the shrimp and oysters caused infections and constantly sore hands.

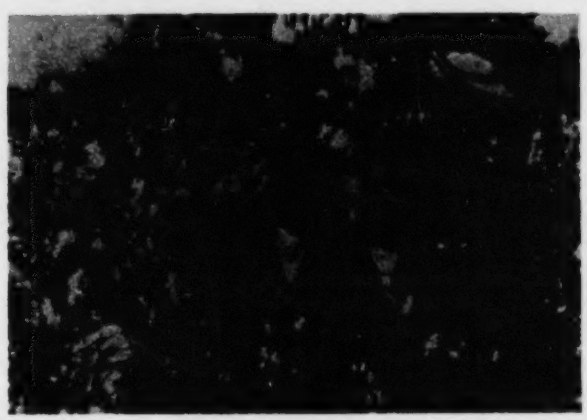
Like other seasonal workers, canning families had to travel with the harvest. They often lived in unclean, overcrowded company camps. Unable to go to school, more than a third of those aged 10 to 15 could not read or write.

Like the girl, *below*, who carried goods for San Francisco merchants, some young people worked on the streets. They shined shoes, sold newspapers and food, delivered messages and ran errands. Statistics about child labor often do not include these children. Though they worked hard, they did not hold formal jobs.

Photo attributed to Arnold Genthe. *Library of Congress*

As many children as worked in factories, more worked on farms. Rural life was no picnic. Alongside their mothers, girls fed animals and coaxed vegetables from sometimes reluctant soil. They cooked in open fireplaces or on crude stoves. They beat clothing clean by hand. By the age of 10, many boys already followed the plow alone. "There just wasn't a minute to spare," remembered a man from Indiana. "At 9 or 10 years of age, I had so many chores to do that it seemed to my infantile mind that I practically ran the farm."

Farm children sometimes squeezed in a few months of school during the winter. In the summer, all were set free, not for vacation but for the hard work of tending and harvesting the crops.



1890 photo. *The Bettmann Archive, Inc.*

Working

Step 1. Choose a young person from one of the photographs on pages 30-31. First, examine the picture carefully and review the text. Write a one-paragraph description of what the person looks like. How tall, short, thin or fat is he or she? How old is the person? What is he or she wearing?

Next, imagine you are interviewing the person. Write one paragraph describing or quoting the person's answer to each of these questions.

- What do you do for a living? How does working help you?
- Has working harmed you? If so, how?
- In general, why do you think people your age work?

Step 2. After school, ask a parent, a grandparent or another adult to tell you about his or her first job. Get answers to these questions.

- How old were you when you got your first job? What year or decade (the 1950s, the 1960s, etc.) was it?
- Where did you work? What did you do?
- How many hours did you work each week? How much were you paid? How long did you have to work to make enough money for a ticket to the movies?
- Why did you go to work?

During the interview, take careful notes. Afterwards, using complete sentences, write out the responses you received.

1. Does the fiction written by the class accurately describe how working helped and harmed children? Why or why not?
2. On the board, make a master list of all the first jobs held by the adults you interviewed. Are they different from the kinds of jobs young people held in the 19th and early 20th centuries? If so, how? How do they compare with the ways members of the class have earned money?
3. How many hours do you have to work to buy a ticket to the movies? Were times better for young movie-goers when your parents or grandparents were growing up?
4. Are young people today more or less likely than children born 100 years ago to work because they need the money? Support your answer with information from your interviews and the text.
5. As a special project, analyze the results of class interviews with adults. Divide the responses into people who started work before 1940, during the 1940s, the 1950s, and during the 1960s. What differences, if any, are there in the age at which these groups took their first jobs? In the hours they worked? In their wages? Make a chart or graph demonstrating the results of your analysis. Present your findings to the class.

There Ought To Be a Law

From the start, some Americans argued against the practice of child labor. They reasoned that working in a factory was not the same as working at home. When working for their own relatives, children had learned a trade from people who cared about their futures. The family's interest and affection could help protect children from overwork and accidents.

Today's factory bosses, said the reformers, had no personal stake in their young employees. They taught children the boring, back-breaking movements necessary to run machines and nothing more. By keeping youngsters out of school, factory work sentenced them to a life of unskilled, low-paid drudgery.

Child labor opponents also claimed that lack of exercise, fresh air and proper food during the growing years left young workers stunted and diseased. Dust and smoke ruined their eyes and lungs. Long hours of moving the same few muscles over and over again caused physical deformities. Children are not as coordinated as adults. They were more likely to lose fingers, arms and legs to the dangerous machines.

Individual suffering aside, how could these broken, unschooled children grow up and take part in a democracy, asked the reformers. Society has an interest in the welfare of each new generation, an important interest which child labor threatened. Abolishing the evils of child labor would protect the public. It would serve the common good, promote the general welfare.

Though relatively few in number, Americans opposed to child labor knew how to pressure the government. They persuaded many states, counties and towns to take action supporting their views. By 1870, dozens of laws had been passed. As an example, Massachusetts set these limits in 1867:

- **Factories and workshops could not hire children under 10 years old.**
- **Children between the ages of 10 and 15 could only work if they had been in school for at least three months during the last year.**
- **Children under 15 could not work more than 60 hours in any one week.**

True, the new rules did not forbid child labor. However, they would prevent its worst effects. Across the country, people applauded such advanced, humane laws. Then, everyone promptly ignored them. They were not enforced. Throughout the 19th century, young children continued to work, often in open violation of local and state laws.

Reformers slowly realized the problem. They had convinced lawmakers that limiting child labor would promote the general welfare. But large segments of the public remained unbelievers.

The business community claimed that restricting child labor hurt its own welfare and the public's. Replacing children with adults meant paying more for labor. This would raise prices and slash profits. If goods cost more, fewer people could buy them. Fewer goods would be made. Fewer people would work. The economy would decline. Everyone would suffer.

Employers also insisted that the laws hurt laborers. Without their children's wages, working families could not survive.

"The mill people need employment and what are you going to offer them?" asked a magazine editor. "What are you going to do for them when you turn them out of the mill?"

Many people questioned whether limiting child labor even promoted children's welfare. According to a group of New England pastors, the laws were actually "a crime against the youth of our land." In support of this view, a Salvation Army officer reminded the public, "There are a lot of children who cannot take education." By denying them the right to work, the laws made these children useless. How were they to fill their time?

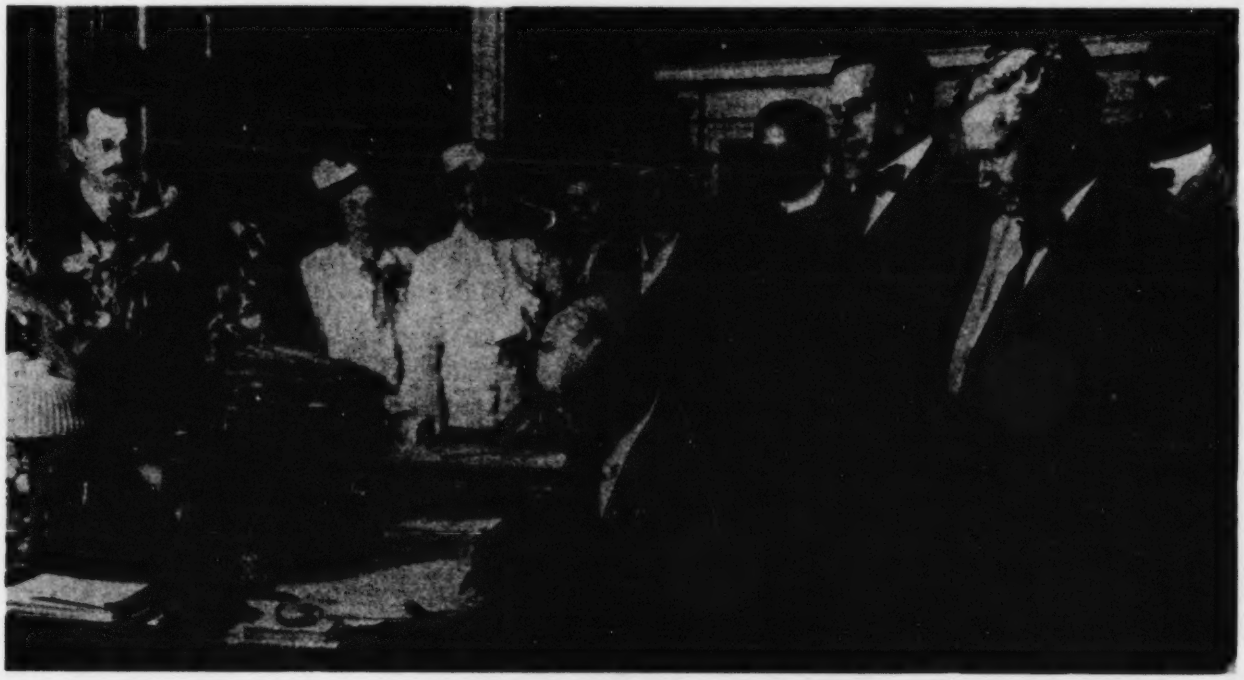
"If you discharge the children at the mills," said a Southern textile manufacturer, "and let them loaf around on the streets, the morals of the children are going to be corrupted. For the good of the children and for the good of the people, we ask you to be kind enough to leave us alone."

There Ought To Be a National Law

As the Industrial Revolution changed how people worked, it also began to change people's ideas about their work. By the 1910s, brutal strikes rocked the country. The publicity which resulted often exposed horrifying conditions. Growing numbers of Americans questioned whether factories, mills and mines were fit places for children.

Child labor reformers focused the rising public pressure on a new target. State and local laws had not worked. What about a national law, a law backed by federal power?

At first, it seemed that, no matter what the public demanded, the federal government could not pass such a law. The Constitution carefully lists the powers of Congress. Nowhere does the document say federal lawmakers can tell employers who to hire. Moreover, it specifically reserves all the unlisted powers for the states...or the people.



President Woodrow Wilson signing the Keating-Owen bill. *Library of Congress*

1. Where does the idea that our government should promote the general welfare come from? Why did some Americans believe that child labor, rather than the laws against it, served this purpose?
2. In 1900, only about 7% of American children between the ages of 10 and 15 worked for wages. (This number does not include children who worked on farms.) How can a practice which directly affected so few people be said to harm the general welfare?
3. How did state and local laws try to improve conditions for young workers? Why did they fail?
4. Review "The Fruits of Their Labor." Would a law like the one passed in Massachusetts have affected any of the children pictured or mentioned in the text? If so, why?

But legislators found a loophole. In the "commerce clause," the Constitution permits Congress to regulate trade between the states. Could this power be used to combat child labor?

In 1916, Congress passed the Keating-Owen bill. The new law applied to:

- **Mines and quarries which employed children under 16 years old,**
- **Factories which employed children under 14 years old, and**
- **Any business which allowed children under 16 to work more than 8 hours a day, more than 6 days a week, before 6 a.m. or after 7 p.m.**

Under the law, products made by these businesses could not be moved from one state to another. Manufacturers could hire children. But everything the children made had to be sold within the state. Such goods could not cross state lines.

While reform forces celebrated, manufacturers fought back. They believed lawmakers had violated the Constitution. Roland H. Dagenhart, a mill worker from North Carolina, agreed.

Mr. Dagenhart wanted his two children, Reuben and John, to go to work. The Fidelity Manufacturing Company wouldn't hire them because of Keating-Owen. Mr. Dagenhart said Congress had no right to prevent him from putting his children to work. Backed by Fidelity, he sued the government. In 1918, his case, *Hammer v. Dagenhart*, reached the Supreme Court.

In presenting their arguments to the Court and the public, Dagenhart's backers took a new tack. Child labor, they admitted, might harm the country in small ways. But the Keating-Owen law posed a major threat to the general welfare.

First, they said, Keating-Owen interfered with the relationship between parent and child. Once granted this power, the government might start telling parents how to treat their children, what to teach their children or worse. Calling the law an "open invitation to communism" (which had just toppled the Russian government), they argued that the law threatened parents' rights.

Their next argument focused on the Constitution's Tenth Amendment. It holds that any powers not given to the federal government belong to the states. Dagenhart's lawyers said that Keating-Owen took a power—the power to regulate labor—away from the states. The law threatened states' rights.

Last, argued Dagenhart's supporters, Keating-Owen increased the government's power to tell business what to do. Again, this could disrupt or even destroy capitalism, which worked best if businesses were left alone. The law threatened employers' rights, workers' rights and the American way of life.

Reformers fought these arguments by showing, over and over, how factory work hurt children. As these facts became more apparent, compassion swayed public opinion. The Supreme Court was not so moved.

The Justices did not decide whether child labor was fair, right or even if it promoted the general welfare. They faced a more narrow question. In passing Keating-Owen, had Congress obeyed the rules set down in the Constitution? In a close five-to-four ruling, the Court said no on two grounds.

According to the Court, selling, trading and buying goods were commerce. Making goods was not. Congress couldn't use the commerce clause to regulate how goods were made. Secondly, ruled the Court, the loophole fooled no one. Congress meant the Keating-Owen bill to regulate child labor, not commerce. The Tenth Amendment left labor laws to the states. The Court declared federal regulation of child labor unconstitutional.

1. Do you agree with the age limits set in the Keating-Owen bill? At what age do you think a person is ready to work full-time? To work part-time?
2. Why might some people who supported state and local laws limiting child labor resist a federal law aimed at the same goal?
3. Do you think the Court made the right decision in *Hammer v. Dagenhart*? Why or why not?
4. In rejecting the Keating-Owen law, the Supreme Court exercised its power to review the actions of another branch of government and determine if they are constitutional. What are the benefits of granting the Court this power? What harm could it cause? Do you think the Court should have this power?

There Ought To Be a Constitutional Amendment

Few factories existed when the Constitution was ratified. Its framers could not have foreseen the economic and social changes brought on by the Industrial Revolution. However, they built into the Constitution a way of responding to change. Article V describes how the Constitution can be amended.

In 1924, Congress passed a proposed Constitutional amendment giving federal lawmakers power to regulate child labor. For the amendment to become law, two-thirds of the state legislatures also had to approve it. Members of Congress held their breath.

The amendment's opponents quickly pointed out that many states had already passed tougher laws. By 1920, the number of people 14 and under employed in U.S. factories had dropped to 400,000. Most children received schooling. Few worked excessively long hours. Few held hazardous jobs. If some factories still ignored the laws, opponents suggested improving enforcement rather than destroying the balance of federal and state power. "There is no need," argued a Massachusetts citizen, "to overturn our government in order to deal with an abuse that no longer exists."

Some states passed the measure. Many wavered. People's needs and interests differed from state to state. Were decisions made in Washington, D.C. likely to promote the general welfare of people in Texas or Indiana or Maine? Shouldn't the states keep their power and work on behalf of their own people? By the end of the 1920s, the amendment seemed doomed.

However, 1929 brought new trouble: the Great Depression. For many people, this period of suffering raised questions about free enterprise. In promoting their own interests, had American businesses contributed to the Depression? As distrust of business spread, the notion that government should keep out of capitalism lost ground. Instead, Americans turned to the federal government for help.

Franklin D. Roosevelt, elected president in 1932, supported more government control of the economy. He encouraged Congress to pass laws to this end. As positions opened on the Supreme Court, he filled them with men who favored his views. Roosevelt faced many setbacks. However,

in 1938, Congress passed the Fair Labor Standards Act. This law set wages, hours and safety conditions for adult work. It also severely limited child labor.

Once more, employers took Congress to court. Buoyed by Roosevelt's appointees, the Court found new meaning in the Constitution. Nothing in that document, as the Justices now understood it, prevented federal regulation of labor. Such laws could be passed within the meaning of the commerce clause.

The Court approved the Fair Labor Standards Act in 1941. This ruling effectively ended child labor in America. At the time, Reuben Dagenhart, the boy whose "right to work" had been upheld in the first Court test, was 38 years old.

1. It is 1926. You are a member of your state senate. Should you vote to ratify the Child Labor Amendment? Consider:
   - Is it necessary? Might stricter state laws or more enforcement be better solutions to the problem?
   - Will turning power over to the federal government best serve the people in your state? Is Congress likely to make decisions which favor your citizens rather than those from another region?
   - Should the government, state or federal, be involved in telling employers who to hire or workers where to work?
2. Why did the Supreme Court make one decision about child labor laws in 1918 and an opposite decision in 1941?

A Thankless Child

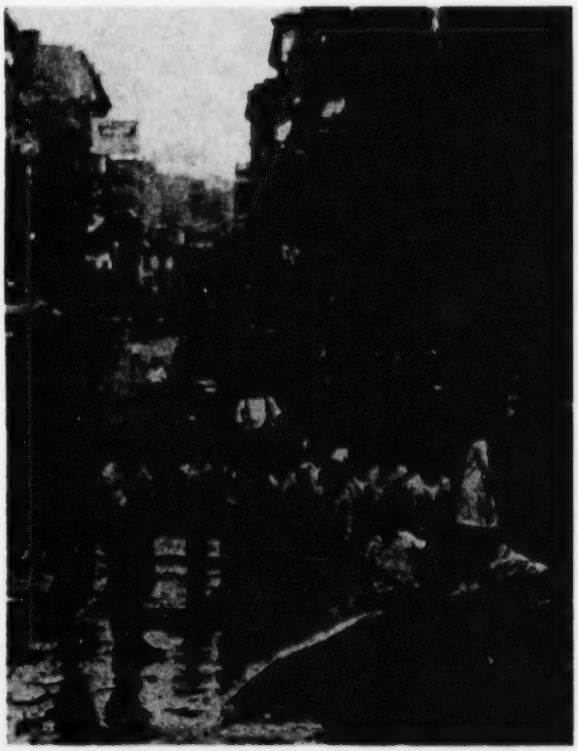
On November 17, 1923, six years after the Supreme Court's *Hammer v. Dagenhart* ruling, *Labor Magazine* published the following story. It was written by Lowell Mellett, a reporter for the Scripps-Howard Newspaper Service. It is reprinted here with the kind permission of *Labor Magazine*.

This is the story of an ungrateful child. The story of a lad for whom all the machinery of the American judiciary was turned to preserve his constitutional rights and who, after six years, has not yet brought himself to give thanks.

The boy is Reuben Dagenhart of Charlotte, N.C.

Six years ago, Federal Judge James E. Boyd, of the western North Carolina district, interposed the majesty of the law in Reuben's behalf. Some months later Chief Justice White and Justices Day, Van Devanter, McReynolds and Pitney did the same. They declared—and they made it stick—that the Congress of the United States could not take away from young Reuben Dagenhart his "constitutional" right to work more hours every day than a boy of 14 ought to work.

There may be another ungrateful boy in the picture—John Dagenhart. John, age 12, had his constitutional rights defended by the same courts to the extent that he was allowed to go on working in a cotton mill at an age when no boy should work at all in a cotton mill. But two days' roving



Idle New York children. *Library of Congress*

through the cotton mill towns around Charlotte last week failed to find John and readers will have to be content with the story of Reuben.

This leaves out, also, the story of Roland H. Dagenhart, father of the boys, whose constitutional right to put them to work in the mills and to receive their wages each Saturday was upheld by the same upright judges....

And should not the Dagenhart boys be grateful for that?

Well, Reuben isn't.

I found him at his home in Charlotte. He is about the size of the office boy—weighs 105 pounds, he told me. But he is a married man with a child. He is 20 years old.

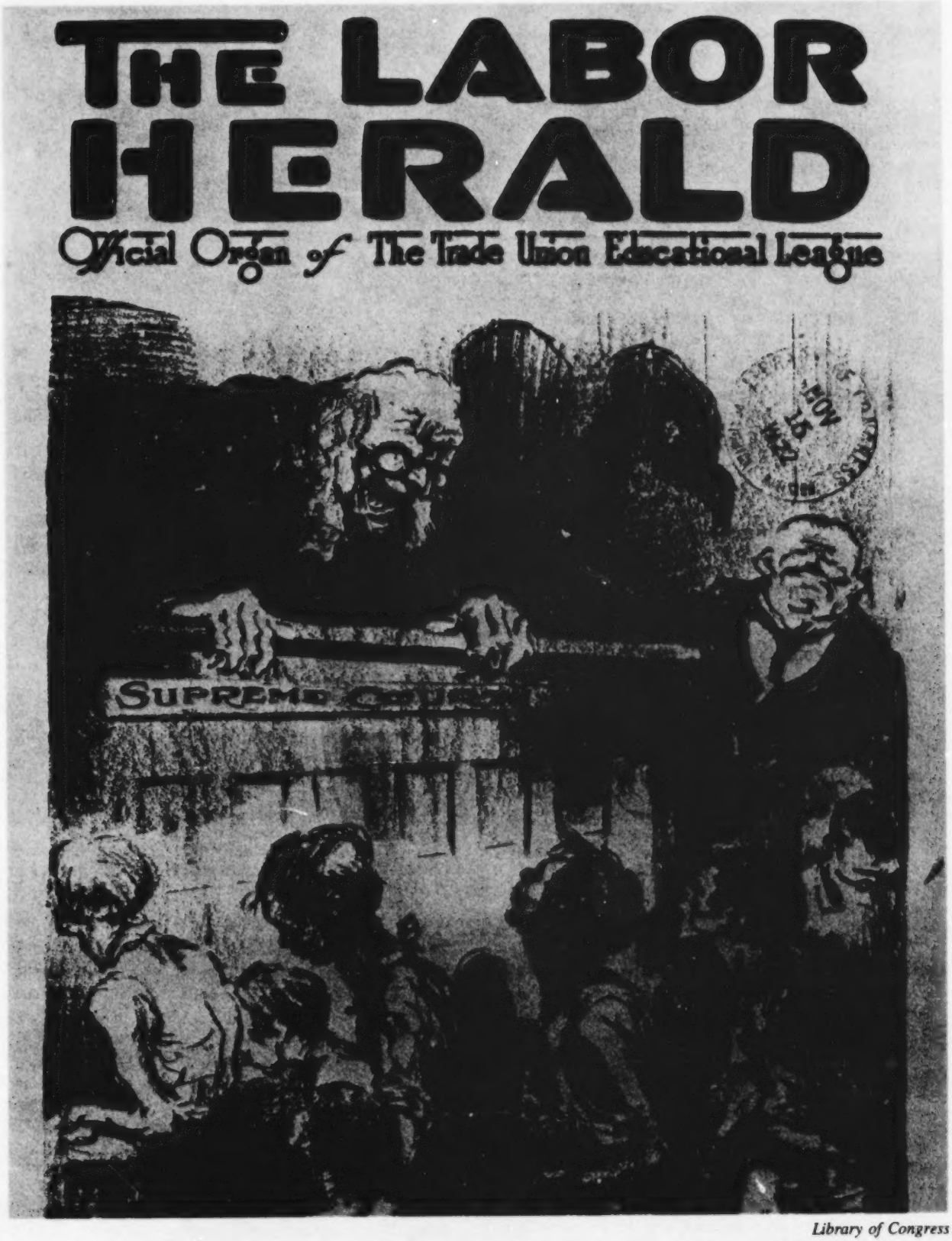
"What benefit," I asked him, "did you get out of the suit which you won in the United States Supreme Court?"

"You mean the suit the Fidelity Manufacturing Company won? [It was the Fidelity Company for which the Dagenharts were working.] I don't see that I got any benefit. I guess I'd been a lot better off if they hadn't won it."

"Look at me! A hundred and five pounds, a grown man and no education. I may be mistaken, but I think the years I've put in the cotton mills have stunted my growth. They kept me from getting any schooling. I had to stop school after the third grade and now I need the education I didn't get."

"How was your growth stunted?"

"I don't know—the dust and lint, maybe. But from 12 years old on, I was working 12 hours a day—from 6 in the



Library of Congress

morning til 7 at night, with time out for meals. And sometimes I worked nights besides. Lifting a hundred pounds and I only weighed 65 pounds myself."

He explained that he and his sister worked together, "on section," spinning. They each made about a dollar a day, though later he worked up to where he could make $2. His father made $15 a week and infant John, at the time the suit was brought, was making close to $1 a day.

"Just what did you and John get out of that suit, then?" was asked.

"Why, we got some automobile rides when them big lawyers from the North was down here. Oh, yes, and they bought both of us a coca-cola! That's all we got out of it."

"What did you tell the judge when you were in court?"

"Oh, John and me never was in court! Just Paw was there. John and me was just little kids in short pants. I guess we wouldn't have looked like much in court. We were working in the mill when the case was going on. But Paw went up to Washington."

Reuben hasn't been to school, but his mind has not been idle.

"It would have been a good thing for all the kids in this state if that law they passed had been kept. Of course, they do better now than they used to. You don't see so many babies working in the factories, but you see a lot of them that ought to be going to school."

"What about John? Is he satisfied with the way things turned out?"

"I don't know. Prob'ly not. He's not much bigger than me and he's got flat feet."

"How about your father?"

"Oh, he's satisfied, I guess. But I know one thing. I ain't going to let them put my kid sister in the mill, like he's thinking of doing! She's only 15 and she's crippled and I bet I stop that!"

1. Compare Reuben Dagenhart's attitude about working as a child with the fictional account you wrote. Does he think his job helped or harmed him? Why did he work?
2. The process by which our government came to abolish child labor took over a hundred years. Do you think it took too long? Why or why not?
3. If you were Reuben Dagenhart, would you answer Question 2 any differently? How? Explain your answer.

Modern Times

The Fair Labor Standards Act (FLSA) is still the major national law about child labor. However, state laws control the specific situations in which young people can or cannot work. Most states set a minimum age for workers at either 14 or 16. Often, people under 18 cannot work more than eight hours a day or more than 40 hours a week. Some states forbid teenage employment during school hours, at night or in dangerous jobs.

Remember, Congress wrote the FLSA in 1938. Many state child labor laws are even older. But the American workplace and home have changed in the last half century. Are child labor laws still needed to protect public safety and welfare? Are they still in our best interest?

Some say no. Better technologies have made factories safe. Labor unions have improved conditions for all working people. The awful abuses children suffered a hundred years ago couldn't happen today. Besides, they add, government meddling in private business harms America. We should loosen our restrictions on who can work.

Opponents reply that some things, such as greed and indifference, never change. Even today, only strong laws prevent the exploitation of young workers. Outside the law's reach—among migrant farm workers, in the illegal sweatshops of our major cities—young children still work long hours for low wages or under unsafe conditions.

In yet another view, the laws help society, not by keeping children out of factories but by keeping them in school. Surely, getting an education is a child's most important job. Besides, we don't have enough jobs for all our adults. Why increase unemployment by adding children to the labor force?

Today's child labor debate does not usually focus on the hours teenagers should work or at what age they should be hired. The most controversial ongoing question is how much young people should be paid.

Currently, federal law sets a minimum wage. The least amount of money an employer can pay any worker, no matter what his or her age, is $3.35 an hour. The law makes several exceptions. Most baby-sitters, summer camp employees and those who work for family members are not covered. Nor does the law apply to some agricultural work, fisheries and certain small retail or service businesses. Using special certificates, some employers can hire limited numbers of full-time students, apprentices or disabled workers at $2.85 an hour.

To help our economy, some people have suggested changing the minimum wage law. Why not pay young workers, those 19 and under, $2.85 or even $2.50 an hour? With less expensive unskilled labor, American business could compete in foreign markets where labor costs are already low. Business people would make more money. They'd invest their profits in other American companies. The economy would bloom.

According to these arguments, lowering the minimum wage would also help young people. Especially in minority communities, teenage unemployment rates are very high. If young workers cost less, more employers would hire them. People who now earn nothing would at least have some money. On-the-job training and good work records would improve these teenagers' chances of landing good jobs as adults.

Most important, jobs would keep young people off the streets and out of trouble. Every year, juveniles are responsible for a quarter of the crime in America. If employed, these teenagers would gain self-confidence, learn respon-

sibility and develop more positive views about the American way of life.

People who oppose this idea say that teenage wages are not the luxury they might seem. Some young people and their families depend on money from part-time or summer jobs to buy necessities such as food and clothing, rather than records and movie tickets. Others are saving for college educations. Why should these people "spread" 50¢ an hour to companies and employers who are already rich?

Encouraging teenage employment may also discourage education. Positions paid at the minimum wage can be dead end jobs. People who hold them may not be trained for more skilled work. When workers reach 20, it may be cheaper to replace them with teenagers than to raise their wages. Young adults could find themselves unskilled, unschooled and unemployed.

Reducing the minimum wage for young workers would also hurt older workers. Adults who now hold unskilled positions will lose them to workers who can be paid less. Adults with few skills will not be able to find jobs. In the end, they will be forced to work for the lower wages—whether it's legal or not—simply to compete with their own children.

Finally, wages are the most important reason people work. Teenagers who give up their afternoons and Saturdays expect something in return. If we make their reward less valuable, will they continue to work? Reducing young people's incomes sends a clear message. No matter how well you do your job, you are worth less than an adult. Is this going to increase teenage self-esteem? Will this encourage positive attitudes toward the American system?

If the law is changed, it could cut young people's income for the next few years by 15% to 25%. But look beyond personal interests for a moment. Is lowering teenagers' minimum wage in the country's best interest? Would this action promote the general welfare?

Ammunition

Before jumping into a debate, it's wise to know not only what you believe, but why your belief may be better than others. This activity focuses on the latter step. In it, you will identify the reasons and arguments which support a given position.

Imagine that Congress is now considering a new law. It reads, "As of midnight, June 1, the minimum wage payable to all persons aged 19 years or under will be $2.85 per hour."

Your teacher will assign you one of these positions:

YES. Passing this law will promote the general welfare.

NO. Defeating this law will promote the general welfare.

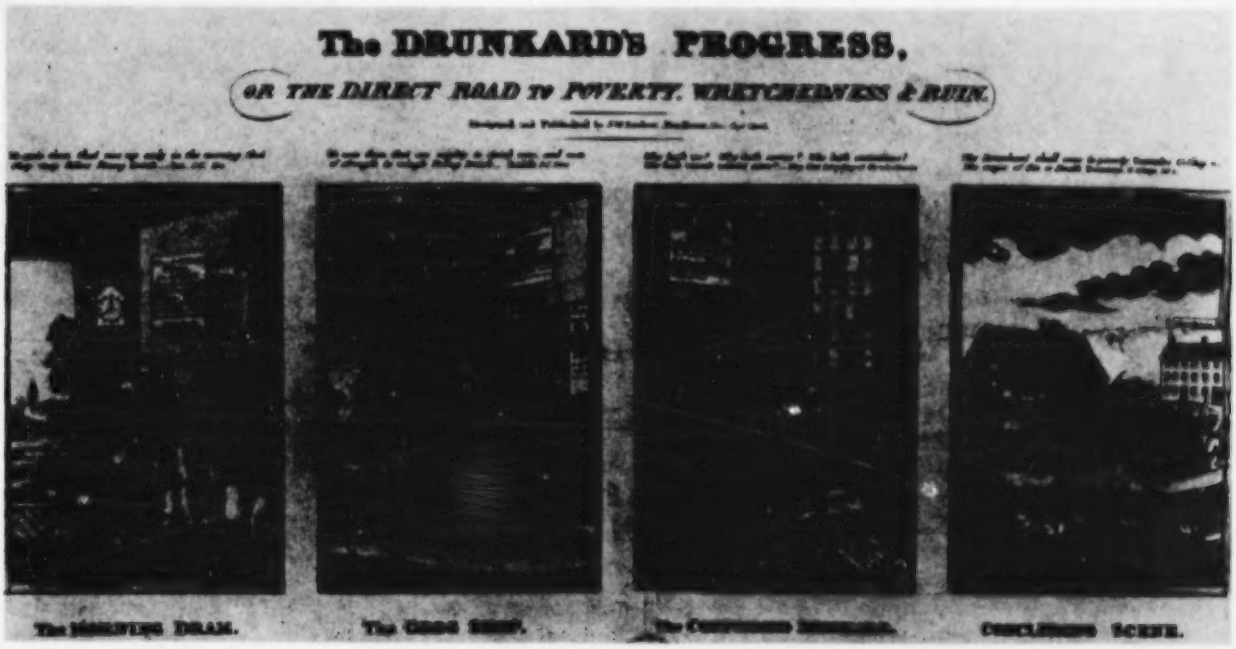
Step 1. Your group's first task is to think up as many reasons and arguments as possible in support of your position. How will passing (or defeating) the law promote the general welfare? Why will it do so? Can you use any of the arguments raised in "Modern Times"? Also consider the reasons why people supported or opposed child labor.

Your group will have only five minutes in which to identify at least ten reasons. Appoint one person to take notes as you brainstorm. Your teacher will tell you when to begin and when to end the exercise.

Step 2. You now have a list of at least ten arguments which support your position. Probably, though, they're just a jumble of notes. As a group, review the arguments on your list, rephrasing them in complete sentences. Some reasons may be clearly stated in just one sentence. Others will take several or even a paragraph.

Step 3. Now that you've thought through your arguments, some may seem much more important than others. Still working as a group, number your reasons in order of importance from 1 (most important or compelling) to 10 or more. Write the numbers on your list.

1. Based on the arguments and reasons listed on the board, which side should prevail in this debate? Explain your answer.
2. Often, public policies benefit one part of society at the expense of another. In your opinion, which groups in our society would this law help? Who would it hurt? Do the benefits to some groups outweigh the harm done to others?
3. You are a member of Congress. How would you vote on this law? Why?
4. With which of these statements do you most agree? Why?
   a. The best way to promote the general welfare is for everyone to work hard in support of policies and laws that are in their own best interest. Since someone will be pushing every possible viewpoint, whatever compromise comes out of the conflict will probably promote the general welfare.
   b. It would be easier to identify and promote the general welfare if people were less concerned with pushing their own interests and took into account how actions and policies which help them might hurt others.



©1826 by J.W. Barber. *Library of Congress*

Demon Alcohol and the Law

Often in U.S. history, people have looked to law to help solve social problems. In the last unit, you followed reformers' efforts to regulate child labor. They managed to get state and local laws passed but failed to amend the Constitution. Another group of reformers, sometimes called Drys, met with more success. They did change the Constitution.

Drys believed that drinking alcohol was the gravest problem facing the U.S. Then, as now, the abuse of alcohol contributed to many social ills. Health and family problems, crime, job loss and accidents are often linked to alcohol abuse. The Drys wanted to end these problems by preventing the use of alcohol altogether. Similar concerns exist today about the abuse of illegal drugs and what should be done to solve this problem.

The effort to prevent alcohol use began in 1826 as the Temperance movement. Temperance workers travelled through rural America urging people to "take the pledge" never to drink alcohol. The Temperance movement also worked to pass laws. In 1846, Maine became the first state to make alcoholic drinks illegal. By 1914, more than one state in four had gone dry.

Like child labor reformers, Drys soon grew impatient with state and local laws restricting alcohol. Weak enforcement and small penalties made the laws easy to ignore. In many places, thirsty citizens simply drove a few miles to a roadhouse in a nearby county where drinking was legal. Frustrated, the Drys asked for a national law to prohibit alcohol. People supporting this goal became known as Prohibitionists.

At the federal level, Prohibitionists again faced the same problem as child labor reformers. The Constitution did not say Congress could outlaw drinking. Therefore, this power belonged to state governments.

The Drys argued that, since states lacked the ability to fully enforce their laws, a federal prohibition law was necessary. If the Constitution did not allow one, the Prohibitionists would try to amend it.

Of course, not all Americans supported Prohibition. Many people, especially in the cities, saw little harm in a simple glass of whiskey. They felt that laws against public drunkenness gave society enough protection. They resented the idea that rural politicians and their supporters would try to change the Constitution and forbid alcohol to everyone. Prohibition's opponents were called Wets.

Though Wets often felt strongly about the issue, they lacked the Drys' zeal and organization. Prohibitionists pursued their goal relentlessly. Using the rules set forth in Article V of the Constitution, they began by persuading senators and representatives to present an amendment measure in both houses.

Next, they lobbied for the measure. The "folks back home," they told Congress, demanded an end to liquor. Drys even successfully worked to remove from office a few Congressmen who spoke out against the measure. Statesmen who personally disliked the measure began to think twice before stating their views in public.

Dry tactics worked best with rural officials. In one important vote on the measure, big-city Congressmen cast only

13 of the 197 "aye" votes. Nevertheless, in 1917, both houses of Congress passed the Prohibition Amendment by the required two-thirds vote.

Now, the proposed amendment had to be ratified by at least two-thirds of the state legislatures. Drys set to work. Again, the folks back home made themselves heard. In only 14 months, 36 states had ratified the measure. Prohibition became the Constitution's 18th Amendment.

The 18th Amendment was quite simple. It did two things:

1. **It forbade making, selling or transporting intoxicating liquors within the U.S. and its territories.**
2. **It gave Congress and all the states power to pass laws enforcing this ban.**

The second provision is very important. Congress and the states had to write specific laws to spell out the amendment's meaning. How would the amendment be enforced? How would lawbreakers be punished? Exactly what did "intoxicating liquor" mean? Did the amendment forbid use of alcohol in religious worship?

After intense debate about these questions, Congress wrote a law called the Volstead Act. This law made Prohibition specific.

a. An intoxicating liquor is any drink which contains more than 1/2% alcohol. (Modern beers are about 5% alcohol.)

b. People could make intoxicating liquors to use in religious services or sell under a doctor's orders. People could also make hard (alcoholic) ciders for home use.

c. Alcohol could be made for industrial use. However, it had to be poisoned so people would not drink it.

d. First-time lawbreakers could be fined up to $1,000 and/or spend up to six months in jail. The largest penalty for a second offense was a $10,000 fine and/or a five-year sentence.

e. On the federal level, the Treasury Department's Bureau of Internal Revenue would enforce the law through a Prohibition Bureau. Since Revenue agents already enforced tax and customs laws, they knew how to combat smuggling. Since they worked for the Treasury, Prohibition agents were called T-Men.

f. To help the T-Men, Congress gave them two unusual powers. They could seize any car, truck, bus, ship or plane they caught transporting alcohol. They could padlock the doors of any shop or cafe they caught selling alcohol. In other words, by depriving people of their property, T-Men could punish lawbreakers before trial or conviction.

A vital clause is missing from both the 18th Amendment and the Volstead Act. Neither measure made it a crime to *buy* intoxicating liquors. Nor was it illegal to *drink* alcohol. On purpose, Congress chose not to ban these acts.

Also, under our laws, people who help others commit crime but don't actually do so themselves can often be charged with conspiring to break the law. In this case, though, Congress decided that alcohol buyers and drinkers could *not* be charged with conspiracy.

Having forged its best effort, Congress passed the Volstead Act. They sent the law to President Woodrow Wilson, who vetoed it. But Congress knew it could do no better. In late October, 1919, the House and Senate overrode the President's veto. In January, 1920, Prohibition became law.

1. Many reform movements swept the country in the late 19th and early 20th centuries. Besides suppressing liquor and child labor, how many of the causes championed in this era can you name? Which of them would you have supported? Why?
2. Why did Congress have to pass the Volstead Act as well as the 18th Amendment?
3. Prohibition did not outlaw two important actions. What were they? Why do you think Congress didn't go all the way and forbid these?
4. Like the proposed child labor amendment, the 18th Amendment increased the federal government's power. Why do you think the states so quickly ratified one, yet refused to approve the other?

The Noble Experiment

All laws have consequences. Part of a lawmaker's job is to try to predict what will happen if a law is passed. He or she must ask questions like these: Will the law do what it is supposed to do? Will its benefits outweigh its costs?

As the start of Prohibition drew near, while the Drys rejoiced and the Wets drowned their sorrows in one last beer, such questions hung in the air. No one was sure what would happen; nothing like Prohibition had ever been tried before. The 18th Amendment and the Volstead Act were a great and noble experiment.

It is December, 1919, the eve of Prohibition. Review "Demon Alcohol and the Law," paying close attention to the Volstead Act. Now it is your turn to predict. What effects will the Volstead Act have on the U.S.? Think of three things that might happen in each of the areas below. Write them on your chart.

Column I — Social (Effects on public health, behavior or morals)

Column II — Economic (Changes in business and industry, labor or the economy)

Column III — Legal/Political (Effects on crime, the justice system or the government)

Column IV — Individual (Impact on you, your neighbors, your personal life or your rights)

Be prepared to discuss your predictions with the class.

The Dry Ideal

Prohibitionists thought the best way of solving the problems raised by alcohol was simply to get rid of it. What could be more direct? Thousands of sufferers and their families

would be saved. More important, many Drys felt that no other government act would do more to promote the general welfare.

All Drys did not support or even agree with all the reasons listed below. However, the movement as a whole made glowing predictions about how Prohibition would benefit the U.S. They claimed it would:

- **Close dangerous saloons.** Non-drinkers often feared the local tavern. Barred from most saloons and told that liquor brought out the beast in a man, middle-class women preferred crossing the street to walking past a saloon door. Even "decent" men shunned certain barrooms and dance halls, where liquor made the work of pickpockets and prostitutes that much easier.
- **Cut crime in half.** Dry data named alcohol as the only cause of 16% of American crime and the major cause of another 31%. Without alcohol, 47% of all crimes would never take place. One victim in two would not suffer. Half our criminals would, instead, be good citizens. With but half the work, the police could turn twice the attention on other criminals. In the near future, crime might all but disappear.
- **Improve public health.** Many of the era's social reformers linked liquor to ill-health. Some Dry doctors went further and said drinking caused malnutrition, venereal disease and insanity. Since many Drys feared that just one drink might lead to alcoholism, only complete Prohibition could reverse these effects.
- **Cleanse the "race" of birth defects.** "Children conceived of parents who, at the moment of conception, are under the effect of liquor, often are stupid or brainless," claimed a horse breeder in 1917. Widely read studies supported such a view. According to the newest scientific fad, eugenics or "race betterment," children deformed by liquor polluted the race.
- **Reduce poverty.** The works of many reformers also showed that alcohol impoverished families. Dry reports linked one-quarter of all charity cases directly to the use of alcohol.
- **Cut taxes.** By solving most social problems, Prohibition would reduce the need for jails, workhouses and asylums. Shrinking government expense meant shrinking taxes.
- **Stimulate the economy.** Most middle- and upper-class and rural people knew little about those who worked in sweatshops, factories and mines. One myth, often used as a reason for keeping wages low, was that workers wasted most of their pay on alcohol. If unable to "drink" their paychecks, workers would buy clothing, furniture and other goods. To meet this new demand, factories would step up production. The economy would grow.
- **Stop on-the-job accidents and absenteeism.** "Gentlemen, there is a liquor shop two miles from Selma," an employer told his state assembly. "And you must shut up that place or I must shut up my cotton mill. It's for you to say which you will encourage—liquor mills or cotton mills. The two cannot go together."
- **Slow down the labor movement.** In many places across the U.S., organizing labor was frowned on, if not outlawed. Liquor gave workers an excuse to meet. As they socialized, they might organize. Some bars even gave free meeting rooms to unions. Business owners warned the public that liquor crippled workers' judgment, making them easy prey for trouble-makers. In this view, only drunken workers would think of striking.
- **Rid city government of graft.** Political machines ran many large cities. The local boss often held court in the saloon. There, men bought and sold votes and doled out favors over glasses of gin and beer. Once freed from his drunken haze, Drys felt, the man on the street would see the evil of machine politics and rebel against this threat to freedom.
- **Prevent riots and mob violence.** "Two-thirds of the mobs, lynching and burnings at the stake," said Booker T. Washington in 1908, "are caused by bad whiskey drunk by bad black men and bad white men."
- **Protect and preserve "native" morals.** Immigrants from Germany, Ireland and Eastern Europe frightened some people from Anglo backgrounds. In their eyes, newcomers and city-dwellers threatened the "native" values and beliefs of small-town America. Drinking wine or beer is a part of many non-Anglo cultures. Outlawing these customs would force newcomers to bow to the "true American" way of life.

Smashing barrels of hootch. *Library of Congress*

1. Taken as a whole, the Prohibition movement held certain prejudices. What biases can you detect in the above reasoning? To what groups in early 20th-century America might these arguments appeal?
2. What prejudices and myths might Wets have played on in response to these claims? What biases might appear in arguments against Prohibition?
3. Which of the consequences listed might promote a special interest rather than the general welfare? Why?
4. Which of the effects predicted in "The Dry Ideal" are likely to occur? How many are now on your chart? Which, if any, should you add?
5. In the first years of this century, at least one part of the American public sincerely believed each of the reasons described above. Though most no longer receive broad support, greatly modified versions of some are widely accepted today.

   - Even one drink can make a reformed alcoholic lose control.
   - Pregnant women who drink wine, beer or cocktails risk harming their babies' health.
   - Alcohol abuse is a major cause of worker error and absenteeism, costing U.S. business millions of dollars each year.

   How would you find out whether these statements are true?

Bathtub Gin

When Prohibition began, the Anhauser-Busch Brewing Company needed a new product to sell. They developed Bevo, a drink with no alcohol which tasted like beer. They spent $18 million building a Bevo factory. They spent more money on ads. The plan failed; no one bought Bevo.

People wanted real beer and they seemed able to find it. "Those who obey the law," complained Anhauser-Busch, "are being ground to pieces. Those who are violating the law are reaping unheard-of rewards."

At one minute after midnight on January 17, 1920, the Volstead Act took effect. America went Dry. It soon became clear that few drinkers intended to let that interfere with their habits. In the last months of 1919, drinkers had begun to stuff their cellars and spare rooms with liquor. If neither sold nor moved, these stocks would be safe. But this sort of forethought took a good deal of money. And, sooner or later, the well would run dry. Where would drinkers get new supplies?

Many people learned to make their own liquor in their own homes. Some just mixed grain alcohol with flavoring to produce "bathtub gin." Others fermented their own wine and beer or distilled stronger alcohol in small home "stills." Those who lacked the skill or patience for homemade "hootch" could just stroll down to the local "speakeasy."

When Prohibition closed bars and saloons, new institutions took their place. In most cities, speakeasies opened in

Flapper with flask, 1922. *Library of Congress*

guarded back rooms. Most would serve a drink to anyone who knew the "secret" location. Some catered only to the rich or famous. Many restaurants and clubs also kept liquor on hand to serve, often in tea cups, to special guests.

According to the Drys, Prohibition ended about 60,000 jobs. Wets claimed the actual number was around 2 million. Some of these brewers, distillers, truckers and saloon keepers found new jobs in the underground economy which grew to satisfy public demand for liquor. Only now, their work violated the law.

Bootleggers and Gangsters

Many sources for alcohol never dried up. For instance, Canada still sold liquor. A lucky driver could get a truck from Toronto to New York without being stopped. In the big city, a club owner, an underground saloon keeper, someone with thirsty friends would be happy to pay a premium price for it.

More and more liquor landed on U.S. beaches and sped across back roads. Confiscated alcohol began to disappear from government warehouses. Bolder souls reopened breweries and ran them under heavy guard.

Liquor smugglers, called "bootleggers," were not new on the scene. Nor were organized gangs of criminals. However, Prohibition so greatly raised the value of smuggled alcohol that the two groups found themselves at war. Bootleggers formed gangs. Gangsters moved in on bootleggers. They hijacked each other's shipments, attacked each other's warehouses, shot each other in the street. Crime rates soared.

The outlawed liquor trade, like today's drug traffic, poured incredible sums of money into underworld pockets. Gangsters used this money to pay for other illegal activities:

gambling, extortion, prostitution, narcotics. They muscled in on businesses and trade unions. From 1920 to 1924, Chicago's Torrio-Stetson gang made more than $40 million. When Al Capone took over in 1925, the gang's income shot up to $100 million a year.

T-Men

At the start, the federal government hired 1,500 T-Men (Prohibition agents) to deal with lawbreakers. That was one agent for every 70,000 Americans. No one thought more would be needed. The folks back home had wanted this law. Surely they would obey it. Also, the 18th Amendment charged America's 175,000 city and state police with helping to enforce the law. Many cities and states, however, resisted. They did not want to spend their limited resources on a federal law.

Vastly outnumbered, the T-Men soon faced a worse problem. Prohibition was only a month old when two agents, the first of many, found themselves on the wrong side of a judge's bench. They had been caught taking bribes.

A typical New York City speakeasy cost $1,370 a month to run. This money paid for drinks, food, cleaning expenses and the barkeep's wage. Some went straight to gangsters to prevent "mysterious" accidents. About $400 each month went to bribe local police and agents to prevent raids.

Prohibition itself did not corrupt law enforcement. It just made an old problem worse. "Police departments throughout the country have been completely demoralized," said a labor leader in 1930. "They are charging so much to permit a barrel of beer to come into a speakeasy and so much for a case of whiskey. Now, when we have a strike on in some of the important cities, we get the worst of it unless we pay the police officer. He has become accustomed to closing his eyes to the violation of the law."

During the 1920s, the government said a person could survive on $1,800 a year. This same government paid its Prohibition agents an annual wage of $1,680. City and state police often made less. Mobsters, however, had plenty of money. Considering the economic reality, it is surprising not that a few officers took bribes but that so many stayed honest.

T-Men Izzy Einstein and Moe Smith belonged to the latter group. They turned finding speakeasies and outwitting bootleggers into a game. All told, they closed more than 3,000 speakeasies and confiscated almost $15 million worth of liquor. Their exploits involved midnight meetings, secret clues and clever disguises. New Yorkers eagerly scanned the morning papers for the latest episode in this true-life detective story.

Then, in November of 1925, for no clear reason, Izzy and Moe were fired. People wondered why. Did officials resent the publicity they got? Had they hauled in one too many prominent citizens? Or was someone in Washington at last fed up with their bizarre methods? Izzy and Moe didn't worry much about the Constitution or the niceties of the law. Many of the 4,900 people they arrested had not committed a crime. They had only been drinking.

The Lawbreakers

Because they could not be charged with crimes, drinkers troubled Assistant Attorney General Mabel Walker Willebrandt. She was in charge of prosecuting people who broke the Volstead laws. When Prohibition began, the federal courts tried about 35,000 criminal cases a year. In 1928, Willebrandt's staff sent them 58,429 Volstead cases alone. By 1932, the number had risen to 70,252 cases.

Enforcement efforts had flooded the courts, bringing the system to its knees. Yet the accused kept coming. Willebrandt blamed the drinkers. Legally, she couldn't touch people who bought liquor. Morally, she felt they were as bad as the gangsters who served them. However, until "lawful" citizens stopped buying liquor, she'd have to keep arresting sellers.

Struggle for control of Chicago crime resulted in the 1929 St. Valentine's Day Massacre. *The Bettmann Archive, Inc.*

Convictions raised more concerns. Each convicted bootlegger had to go to jail. But where? In 1920, our five federal prisons had room for 7,000 inmates and they weren't full. By 1930, the government had 12,000 prisoners, 4,000 of whom had broken the Volstead laws. In 1932, the courts sent 45,000 more liquor outlaws to jail.

One convict was 23-year-old Jennie Justo. A University of Wisconsin dean had reported her for selling drinks to students. By posing as friends of her brother, T-Men caught her in the act. The newspapers nicknamed her "Queen of the Bootleggers."

Justo said she delivered and then sold whiskey and gin because her family needed money. The Depression was on. She couldn't find another job. In January, 1932, the court fined her $500 and sent her to jail for six months. "Though I know I've broken the Prohibition laws," she told reporters, "I'm not a criminal."

Most people who went "up the river" were small-time operators like Jennie Justo. Organized crime was too well protected. Gangsters even applauded these arrests. They removed competition. Also, the press coverage made people believe something was being done.

Rich and Poor

The public's common sense could only be pushed so far. Everyone knew someone was drinking. Everyone said it was somebody else. The rich, for example, made an easy target. Arriving in Santa Barbara, California, a social worker asked a chauffeur if Dry laws were being enforced. "That depends," answered the driver, "on whether you sit inside or outside the limousine."

Even Asst. Atty. Gen. Willebrandt helped spread this myth. In speech after speech, she argued that the middle classes did not drink. Bootleggers catered to society's "dregs" and to "the upper crust which feels itself above and superior to the law." No doubt some wealthy people did think they were above the law. No doubt many had experiences—with other laws as well—which justified this belief. But given the chance, the folks back home also ignored the Volstead Act.

On April Fool's Day, 1924, a furniture van smashed into a train just outside a small Pennsylvania town. Suspicious shopkeepers and farmers bored holes into the van's false bottom. They found 250 gallons of homemade whiskey. Much later, the police arrived. They found a throng of most unsober citizens, "each with a bottle or bucket in hand, doing a wild dance around the wre[illegible]."

The public also blamed Volstead's failures on working people. They noted that most of the lawbreakers in court came from the lower classes. Unable to pay for protection, poorer people were more likely to be caught and convicted. Unequal enforcement and the high cost of liquor irked the poor drinker.

By custom, beer was a working-class drink. Before Prohibition, it was much cheaper than hard liquors. When outlawed, the price of hard liquor rose an average 33%. The price of beer doubled. Beer was as difficult to transport as other liquors but not, at first, as profitable. It became scarce, driving the price up. An 8-ounce glass of beer could cost far more than a 1-ounce shot of hard liquor.

In 1927, a Croatian immigrant living in Ohio told how Prohibition affected his friends. He said:

> Men used to go to a saloon maybe once a week and get a drink. Now go one or two months without a drink. Then meet a friend, go to private home, take one drink, then two, then another because they know it will be long before they can have more, and end by spending their whole pay and then getting sick.

Closing saloons, the man added, moved liquor sales to private homes. No good could come from women tending bars. "Saloons was better," he said. "No children could go there and no women."

Contradictions

Other critics noted a more serious moral danger. "Today, there is not any feeling of resentment against racketeers and gangsters," a witness told the government. "They are looked upon as being part of a trade to satisfy a social want."

Worse, if this law could be so easily ignored, why obey other laws? The Dry laws seemed to blur the lines between right and wrong. One reformer, Pauline Sabin, suggested that Prohibition had taught children "a total lack of respect for the Constitution and the law." A 1931 *New York Times* survey produced astonishing confirmation. The city's children were asked to name the most important person in their community. "The bootlegger" got more votes than anyone else.

The Volstead Act allowed companies to make industrial alcohol, but they had to poison it. Much of this alcohol was stolen. Hurrying to turn a profit, bootleggers didn't worry about the poison. Many just added color and flavor and passed the stuff on to their clients. Historians have recorded the result: Between 1925 and 1929, more than 20,000 people died from drinking poisoned liquor. Thousands more were blinded or crippled.

Even this horror story didn't tarnish the bootleggers' glamorous image. People blamed the government and the Drys for poisoning the liquor in the first place. Wets played on this blame, referring to the poison statistics every time Drys tried to point out the good effect Prohibition was having on the nation's health.

During Prohibition, Americans drank about one-third less alcohol than they had before. As a result, diseases linked to alcohol decreased. The most dramatic drops occurred in the first few years. In 1920, for instance, New York's state hospitals admitted only one-fifth as many cases of alcoholic psychosis as they had ten years before. Arrests for public drunkenness declined, as did the number of alcohol-linked accidents.

One statistic that did not shrink during Prohibition was the dollar amount people spent on liquor. They were drinking less, but alcohol cost more. In 1928, Americans bought about

$5 billion worth of drinks. Mobsters raked in that money tax free.

Income taxes had only been around since 1913. Before that, from 1870 on, federal records show that between half and two-thirds of the government's revenue came from taxes on liquor. Prohibition could not have been passed until after 1915, when income and excess-profit taxes replaced liquor taxes as the major source of federal revenue. Now people began to question the wisdom of this exchange. Perhaps legal liquor would reduce income taxes.

From *Judge* magazine, June 5, 1926. *Library of Congress*

Regardless of their private habits, America's wealthy captains of industry had long championed Prohibition. The Rockefellers, for instance, had poured over $1 million into the Dry cause. In 1932, John D. Rockefeller, Jr. changed the family's stand. The best citizens, he said, were not obeying the Dry laws. "Respect for all law has been greatly lessened."

But carmaker Henry Ford supported a Dry America to the end. In 1930, in response to the growing movement to change the law, Ford issued a threat. If Prohibition was repealed, he'd stop making cars. He didn't want to put his autos into the hands of "a generation soggy with drink."

By the early 1930s, most observers recognized that the Volstead Act wasn't working. Something had to be done. In January, 1920, just before the U.S went Dry, there were about 228,000 places to buy a drink in the U.S. Roughly 50,000 of these bars operated with no license, outside the law. According to contemporary writers, in December, 1933, there were about 219,000 places to buy a drink. They were all outside the law.

1. Why did Prohibition have an effect on U.S. crime rates?
2. Though "Bathtub Gin" does not focus on Prohibition's benefits, it does list some. What are they?
3. According to the reading, which predictions from "The Dry Ideal" came true? Which did not?
4. What were some of Prohibition's other consequences? Which, if any, of these did you predict?

Mr. Hoover's Advisors

The 1928 campaign for president sparked a hot debate over Prohibition. The Volstead Act was not working. On that, almost all agreed. Many Drys felt that the law had not been given a fair chance. They argued for stricter enforcement and more severe penalties for those who broke the law. Not just suppliers but drinkers themselves should be punished. Make these changes, claimed the Drys, and people would stop drinking and obey the law.

Most Wets did not agree. In their view, nearly ten years of Prohibition had proved it a failure. Stricter enforcement would cost a great deal and did not get to the root of the problem. The U.S. must face a simple fact: Too few people believed in the law to allow it to work. Repeal Prohibition, they demanded, before more harm is done.

Presidential hopeful Herbert Hoover believed in Prohibition or, as he called it, "the noble experiment." He himself opposed any change in the Dry laws. Yet, as a politician, Hoover knew that something had to be done.

Imagine it is the summer of 1928. You have been asked to join candidate Hoover's team of election advisors. As the vote nears, debate over Prohibition grows more intense. A number of cures have been proposed and Hoover must deal with these issues in his campaign. Your job is to examine one of the proposals below and report to Hoover. The man who may well be the next President of the United States is depending on your analysis.

a. **No change.** Leave the law as is. Enforce it at the same level. In time, people will grow used to the law and obey it.

b. **Step up enforcement.** Hire more T-Men. Pay them more money. Give them more power. Also, increase the number of prosecutors, courts and prisons. (The President could make some of these changes if Congress approved the money.)

c. **Make beer and wine legal.** (By a majority vote in both Houses, Congress could change the Volstead Act. Members could define intoxicating liquor as that with, say, 10% alcohol or more.)

d. **Make the production and sale of liquor legal, but place it under strict federal control.** (This would require a new change in the Constitution. Two-thirds of

the members of both Houses of Congress and two-thirds of the state legislatures would have to approve it.)

e. **Make liquor legal with no federal control.** (This, too, would require a new amendment, repealing, or taking back, the 18th.)

Step 1. When your team of advisors has been assigned a proposal, use the questions that follow to analyze it. Appoint one teammate to take notes.

- What positive things might happen if this proposal is adopted?
- Which of the problems caused by Prohibition will it solve? How will it do so?
- What negative things might happen if it is put into effect? What new problems might it cause?
- Based on these factors, would you recommend this proposal to Mr. Hoover? Why or why not?

Step 2. Working as a team, prepare a two-minute presentation for Mr. Hoover. In it, describe the proposal, summarize your findings and explain them. Then, select a spokesperson to make the presentation. If time permits, rehearse it with him or her.

1. Which of the arguments used by other teams most impressed you? Why?
2. What information, beside that which you were given, would have helped you assess your proposal?
3. Imagine that Hoover based his campaign platform on one of the recommended proposals. Would extreme Wets or Drys have given him support? Would his general popularity have suffered? Why or why not?

President Hoover's Commission

In November, 1928, Herbert Hoover was chosen President of the United States. The issue of Prohibition had to be addressed, and quickly. What could the new leader do to lessen public concern, yet hold true to his pro-Dry beliefs? Hoover announced two courses of action.

- He would enforce the law strictly. "If a law is wrong," he explained, "its rigid enforcement is the surest guarantee of its repeal. If it is right, its enforcement is the quickest method of compelling respect for it."
- He would hold formal hearings. He did not want to attack Prohibition. Instead, he asked why the law wasn't being obeyed. How might it be better enforced? He ordered a National Commission on Law Observance and Enforcement to explore these two questions and give him a report.

Though welcomed by some, the National Commission did not receive full support. Hoover's first three choices for its leader sent polite regrets. Why jump into a no-win situation? If the Commission left the law alone, Prohibition would continue to be a thorn in Hoover's side. If it suggested changes other than harsh enforcement, Drys might stop supporting him.

Also, the Commission could question and recommend, but it would have no power to act. Even the President lacked power to do much more than provide leadership. Only Congress could change the Volstead Act. Only Congress and the states, together, could repeal Prohibition.

Wide World Photos

At last, Hoover found someone willing to accept the challenge. George Wickersham had been U.S. Attorney General during the Taft era. He knew how to enforce federal law. Just as important, Mr. Wickersham was Dry. Ten noteworthy citizens completed the group—judges, attorneys, a college president and even a former Secretary of War.

In late May, 1929, the Wickersham Commission began its task. Investigators took to the field. Staff members poured through newspapers and reports. Dozens of witnesses appeared to testify. As word of the Commission's actions got to the press, Hoover grew worried, then slightly embarrassed.

The Commission had quickly found it could not limit its scope to enforcement alone. As they later revealed, members had to face the bigger questions. Could the law, in its present form, really be enforced? If not, should the law be retained, revised or repealed?

In its quest for the truth, the National Commission on Law Observance and Enforcement spent 19 months and more than half a million dollars. It gave Hoover its final report on January 18, 1931. Would the Commission come out against the President's own views or uphold them? The country waited to find out.

When Hoover read the report, he told the press:

> The Commission considers that the conditions of enforcement of the Prohibition laws in the country as a whole are unsatisfactory. But it outlines further possible improvement. It calls attention to the urgency of obedience to law by our citizens. It recommends that further and more effective efforts be made to enforce the law. By a large majority, it does not favor outright repeal.

In short, Hoover said the Commission favored his view. It suggested that he strictly enforce the Volstead Act.

Then, the full report was released to the public. Many of those who read it were shocked. Yes, a brief summary which began the report agreed with Hoover's statement. But the report itself did not.

In fact, all but two Commission members wanted major changes in the Prohibition laws. Two asked for immediate and complete repeal. Two thought the 18th Amendment could be saved by major changes in the Volstead Act. The largest group—five members—wanted to make liquor legal and place it under strict government control.

In the press and Congress, Wets raised an uproar. Hoover, they charged, was playing politics with the Commission's findings to suit Dry forces and his campaign contributors. He had misstated the facts, knowing that most people would not read the full report.

The Commission, too, came under attack. Why did they sign a summary which had so little to do with their real findings and beliefs? Wets gave the group a new name: the Wicked Sham Commission.

Neither the report nor the scandal helped the Dry cause. Some observers thought they hastened the end of the Dry laws. Within just two years, by February 16, 1933, both Houses had passed a 21st Amendment to repeal the 18th. The measure left the issue of if, when and where liquor could be sold to the states. Each state would control alcohol within its own borders.

In less than ten months, enough states had ratified. When Utah passed the 21st Amendment, at about 3:30 p.m. on December 5, 1933, the noble experiment was over. Ten minutes later, across the state line in Nevada, bars reopened for business.

1. Some Drys predicted the public would celebrate repeal with wide-spread drunkenness and disorder. Others worried about swift rises in alcohol-linked injury and disease. Though these fears were not realized, repeal had some costs. What negative effects or problems do you think repeal caused?
2. Why do you think the noble experiment failed?

The Outer Limits of Law

The United States' experience with Prohibition during the 1920s and early 1930s raised issues about law which are still being debated today. One of the most vital centers on what law's purpose should be in the first place.

For many reasons, our society passes laws which forbid and punish acts that harm us as a whole. Few seriously question, for instance, that murder, robbery or theft should be outlawed. Each of these actions hurts individual victims. In addition, if society did not forbid them, the whole public could be harmed by chaos, injustice and fear.

Was Prohibition's purpose any different? Some would answer no! Alcohol abuse can harm drinkers, their families, their employers and all of society. The public, then, has a legitimate purpose in outlawing the sale of liquor.

Others would argue that, even if drinking too much is stupid, harmful or immoral, society has no right trying to save people from themselves. Whether or not it causes harm, drinking alcohol is a private act. Laws which forbid this act cost too much to enforce and interfere with the rights of the many people who drink responsibly.

Today, similar debates arise over the use of drugs. In spite of tough laws and harsh penalties, people still consume marijuana, cocaine, heroin and barbiturates. Making and transporting these drugs is outlawed or strictly controlled throughout the U.S. Yet the demand is strong and vast amounts are smuggled across our borders. Would stricter laws, stronger enforcement and more severe penalties stem the tide? If so, what would be the costs?

Other outlawed acts, past and present, have prompted the same questions. For example:

- Gambling (placing a wager or betting on a game of chance)
- Adultery (sexual relations between a married person and someone other than his or her spouse)
- The distribution of birth control information and/or devices
- Publishing, distributing and/or possessing pornography
- Prostitution
- Homosexuality

Does forbidding these acts serve a legitimate purpose of law in a democracy? Do such laws promote the general welfare? Where should society draw the line between completely private acts and those which harm the public as a whole? Society and its citizens will always be confronted with these questions.

1. What questions should a citizen ask about a proposed law to decide whether it promotes the general welfare? Develop a list of these questions.
2. Working individually or in teams, apply the questions you've developed to state or local laws controlling one of the acts listed above or the use of a specific drug. Conduct research to find out what laws apply, assess their costs and benefits and answer your questions. Report your results in a paper or present them to the class.
3. In what other ways, besides passing laws, can governments solve societal problems or promote the general welfare?

Vocabulary

absenteeism *n.* Not going to work or school on a regular basis; the habit of not being present.

adversary *n.* An enemy, opponent or competitor. An *adversarial* relationship is one in which two or more parties compete with or strive against each other.

allege *v.* To claim a fact, statement or charge is true without or before proving its truth. Such a claim is called an *allegation*.

bayou *n.* A slow, sluggish pool or stream which creates a marsh or swamp.

bootlegger *n.* A person who makes, moves or sells illegal alcohol. The word comes from the early smugglers' habit of hiding bottles in their boots.

confiscate *v.* To take away, to seize.

consensus *n.* General agreement or harmony of opinion within a group.

dilemma *n.* A difficult choice between equal alternatives; a problem which seems unsolvable.

disruption *n.* An upsetting event; an act which causes disorder or confusion, or the chaos resulting from such an act.

exploitation *n.* The selfish, immoral or harmful use of people or things; the full or excessive use of something.

illicit *adj.* Not allowed, unlawful, illegal.

impartial *adj.* Without bias, prejudice or favoritism; fair and just.

incite *v.* To stir up, to excite, to inspire or provoke others to act.

indict *v.* To charge with a crime, to formally accuse. When presented by a grand jury, such a written accusation is called a *bill of indictment*.

infiltrate *v.* To pass into, enter or join something secretly, gradually or through deception.

intervene *v.* To come between.

judiciary *n.* The court system, the branch of government which administers justice.

legitimate *adj.* Lawful, reasonable, genuine, correct or rightful; conforming to tradition or established standards.

magistrate *n.* A judicial officer whose authority to administer and enforce the law is limited; e.g. a justice of the peace.

mediation *n.* The settling of conflicts between two parties through the effort, action and persuasion of a third party, often called a *mediator*.

procure *v.* To get, to obtain.

radical *adj.* Extreme, revolutionary.

relevant *adj.* To the point, connected with the subject at hand, fitting or appropriate.

unanimous *adj.* In total agreement or complete harmony. From a Latin word meaning "of one mind."

valid *adj.* Sound, strong, well-grounded, effective or logical; legally correct.

violation *n.* The act of breaking rules, laws or standards.

wampum *n.* Small beads made from shells. The Iroquois recorded their history and agreements in the patterns on strips of wampum. Native Americans also used the beads as currency and jewelry.

Repeal at Cavanagh's, a famous New York restaurant. *Wide World Photos*

Constitutional Rights Foundation

LAW IN SOCIAL STUDIES SERIES

51